

APPENDIX

IN THE

Supreme Court of the United States

October Term, 1973

No. 72-1061

WINDWARD SHIPPING (LONDON) LIMITED, *et al.*,*Petitioners,*

v.

AMERICAN RADIO ASSOCIATION, AFL-CIO, *et al.*,*Respondents.*

ON WRIT OF CERTIORARI TO THE COURT OF
CIVIL APPEALS, FOURTEENTH SUPREME
JUDICIAL DISTRICT OF TEXAS

PETITION FOR CERTIORARI FILED JANUARY 31, 1973

CERTIORARI GRANTED JUNE 4, 1973

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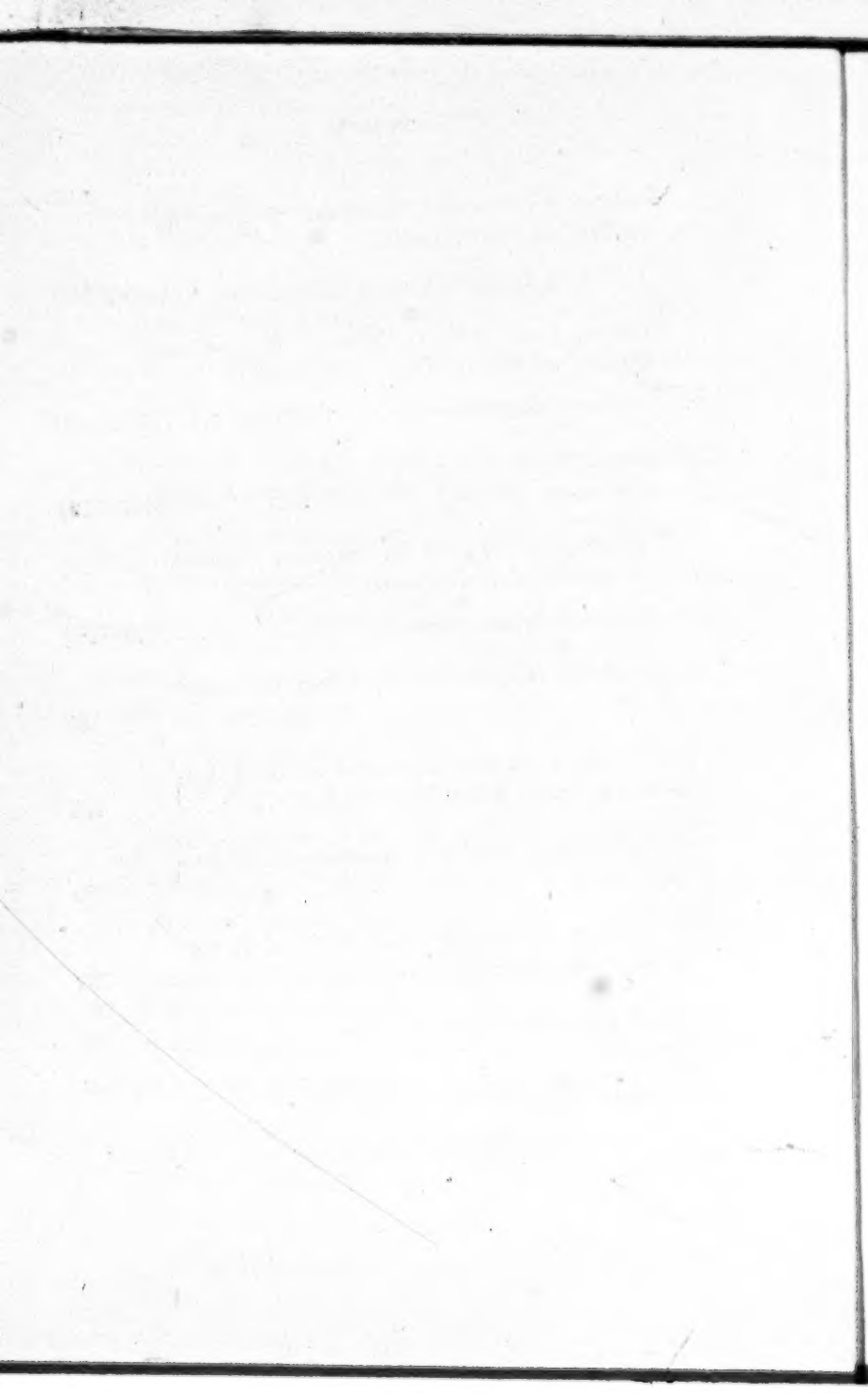
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Chronological List of Relevant Docket Entries

- October 30, 1971 Petition of plaintiffs Windward Shipping (London) Limited and SPS Bulkcarriers Corp., seeking temporary and permanent injunctive relief against picketing by defendant unions, filed in the District Court of Harris County, Texas, 55th Judicial District.
- October 30, 1971 Petition of plaintiff Westwind Africa Line, Ltd., seeking temporary and permanent injunctive relief against picketing by defendant unions, filed in the District Court of Harris County, Texas, 61st Judicial District.
- November 8, 1971 Amended petition of plaintiffs Windward Shipping (London) Limited and SPS Bulkcarriers Corp. filed in the District Court of Harris County, Texas, 55th Judicial District.
- November 8, 1971 Amended petition of plaintiff Westwind Africa Line, Ltd. filed in District Court of Harris County, Texas, 61st Judicial District.
- November 8, 1971 Defendants' Answer to Plaintiffs' Amended Petitions * for Injunction filed in the District Court of Harris County, Texas, 164th Judicial District.
- November 8-9, 29-30, 1971 Trial of actions before the District Court, Harris County, Texas, 164th Judicial District.
- December 10, 1971 Judgment dismissing the cases for lack of jurisdiction entered by the District Court of Harris County, Texas, 164th Judicial District.

* The action by Windward Shipping (London) Limited and SPS Bulkcarriers Corp. and the action by Westwind Africa Line Ltd. were consolidated by agreement of the parties on November 8, 1971.

Chronological List of Relevant Docket Entries

- December 10, 1971 Plaintiffs' Notice of Appeal to Court of Civil Appeals of Texas entered in the District Court of Harris County, Texas, 164th Judicial District.
- May 17, 1972 Judgment affirming the judgment of the District Court of Harris County, Texas, 164th Judicial District, rendered and opinion filed by Court of Civil Appeals, Fourteenth Supreme Judicial District of Texas.
- June 14, 1972 Order of Court of Civil Appeals, Fourteenth Supreme Judicial District of Texas, overruling appellants' motion for rehearing, rendered.
- July 14, 1972 Petitioners' application for a Writ of Error to the Court of Civil Appeals, Fourteenth Supreme Judicial District of Texas, filed in Supreme Court of Texas.
- October 4, 1972 Order of Supreme Court of Texas refusing the application of petitioners for a writ of error to the Court of Civil Appeals, Fourteenth Supreme Judicial District of Texas, entered.

**Plaintiffs' First Amended Petition for Injunction.
Filed: November 8, 1971.**

IN THE
DISTRICT COURT OF HARRIS COUNTY, TEXAS
55TH JUDICIAL DISTRICT OF TEXAS

No. 889002

**WINDWARD SHIPPING (LONDON) LIMITED & SPS
BULKCARRIERS CORP.**

VS.

**AMERICAN RADIO ASSOCIATION AFL-CIO, INTERNATIONAL
ORGANIZATION OF MASTER MATES AND PILOTS AFL-CIO,
NATIONAL MARINE ENGINEERS BENEFICIAL ASSOCIATION
AFL-CIO, NATIONAL MARITIME UNION OF AMERICA AFL-
CIO, RADIO OFFICERS UNION OF THE UNITED TELEGRAPH
WORKERS AFL-CIO & SEAFARERS INTERNATIONAL UNION
OF NORTH AMERICA AFL-CIO**

FIRST AMENDED PETITION FOR INJUNCTION
To The Said Honorable Court:

Comes now Windward Shipping (London) Ltd., Plaintiff herein and SPS Bulcarriers and files its first Amended Complaint herein, and complaining of (1) American Radio Association, AFL-CIO, (2) International Organization of Masters, Mates and Pilots, AFL-CIO, (3) National Marine Engineers Beneficial Association, AFL-CIO, (4) National Maritime Union of America, AFL-CIO, (5) Radio Officers Union of United Telegraph Workers, AFL-CIO, and (6) Seafarer's International

Plaintiffs' First Amended Petition for Injunction

Union of North America, AFL-CIO, Defendants, herein alleges and says:

I.

The Plaintiff Windward Shipping (London) Limited is a British corporation.

The Plaintiff SPS Bulkcarriers Corp. is a Liberian corporation.

II.

The Plaintiff SPS Bulk Carriers Corp. owns a vessel, the SS Theomana, of Liberian registry, which is presently afloat in navigable waters of Harris County, Texas, which is unable to load a cargo of grain because of the unlawful conduct of the Defendants, their officers, agents, servants, representatives and persons acting in concert with them, as the same will be detailed hereafter.

III.

The Plaintiff is signatory to a labor agreement with a labor union known as Pan Hellenic Seamen's Federation and in addition it has entered into employment contracts with certain members of the crew who are not covered by said Pan Hellenic Seamen's Federation agreement. Both of such agreements cover the wages, hours and other conditions of employment of the crew of the vessel SS Theomana, both of such contracts are currently in full force and effect.

IV.

The Defendant Unions are Labor Unions whose officers and crews sometime man vessels of United States Registry but none of which are employed by or work for or perform services on or connected with the SS Theomana or any

Plaintiffs' First Amended Petition for Injunction

other vessel owned by the Plaintiffs. The activities of the Defendants, their officers, agents and employees are not protected by the Labor Management Relations Act, as amended.

V.

The vessel SS Theomana is not in commerce or engaged in activities affecting commerce as the same is defined by the National Labor Relations Act, as amended, and in fact, the United States Supreme Court has held in *McCullough et al, members of the National Labor Relations Board vs. Sociedad Nacional de Marineros De Honduras*, 372 U. S. 10 (1963) and other cases, that the jurisdictional provisions of the National Labor Relations Act do not extend to maritime operations of foreign flag ships employing alien seamen.

VI.

Some of the members of the crew of the SS Theomana are members of the Pan Hellenic Seamen's Federation as aforesaid, and all are foreign nationals and none are citizens of the United States of America. All of the officers on such vessel are likewise foreign nationals. The crew of the vessels covered by the agreement between Plaintiff and the Pan Hellenic Seamen's Federation and the individual seamen and there is no dispute in either case between the crew and the Plaintiff under such agreements.

VII.

On or about October 29, 1971, the Defendants, acting in concert with each other by joint handbilling, joint picketing and other concerted activities, have caused members of the International Longshoremen's Association to re-

Plaintiffs' First Amended Petition for Injunction

fuse to work the ship of the Plaintiff and the purpose of such picketing was to cause the Plaintiff, by economic pressure exerted through the International Longshoremen's Association, to breach its contract with Pan Hellenic Seamen's Federation and/or the individual contracts with the seamen by such economic pressure, contrary to the provisions of Article 5154d, Sec. 4 of the Revised Civil Statutes of Texas, and contrary to Sec. 353 and 357 of the Maritime of the Republic of Liberia.

VIII.

The Defendants knew when they engaged in the activities aforesaid that the members of the International Longshoremen's Association and other Unions would observe and respect the picket lines of the Defendants and in fact, officers of the International Longshoremen's Association have publicly stated and testified under oath that the members of that Union would not cross the picket lines of any union and with such knowledge they knew that their unlawful conduct as aforesaid would be accomplished unless such conduct were restrained. The Defendants knew that the picketing would interfere with the operations of Plaintiff and pursued the unlawful course of conduct with intention to do so.

IX.

Further, such conduct by the Defendants under the circumstances stated above, is an intentional tort for which the Plaintiff has no remedy at law.

X.

The Plaintiff is suffering and will continue to suffer irreparable injury by injury to its business reputation as reliable transporters of cargo and is suffering monetary

Plaintiffs' First Amended Petition for Injunction

damages which are not ascertainable and for which it has no adequate remedy at law. The Plaintiff will continue to suffer such irreparable injury if not enjoined by this Court.

Wherefore, Plaintiff prays that the Defendants, their officers, agents, servants, representatives and persons acting in concert with them, be enjoined from picketing, handbilling or otherwise interfering with or attempting to cause the Plaintiff to breach its contract with Pan Hellenic Seamen's Federation and/or the individual contracts with the seamen, or violating the laws of the State of Texas and the Republic of Liberia or otherwise disrupting or interfering with the internal order and economy of Plaintiffs vessel and from causing the Plaintiff irreparable damage or harm.

Respectfully submitted,

W. D. DEAKINS, JR.

W. D. Deakins, Jr.

Of Counsel:

VINSON, ELKINS, SEARLS & SMITH
First City National Bank Bldg.
Houston, Texas 77002

Of Counsel:

ROYSTON, RAYZOR & COOK
Suite 3710 One Shell Plaza
Houston, Texas 77002

.....
Ben L. Reynolds

Attorneys for Plaintiffs

(Sworn to by W. D. Deakins, Jr. and Ben L. Reynolds,
November 8, 1971.)

**Defendants' Answer to Plaintiffs' First Amended
Petition for Injunction. Filed: November 8, 1971.**

IN THE
DISTRICT COURT OF HARRIS COUNTY, TEXAS
164TH JUDICIAL DISTRICT OF TEXAS

No. 889,002

WINDWARD SHIPPING (LONDON) LIMITED & SPS
BULKCARRIERS CORP.

VS.

AMERICAN RADIO ASSOCIATION AFL-CIO, INTERNATIONAL
ORGANIZATION OF MASTER MATES AND PILOTS AFL-CIO,
NATIONAL MARINE ENGINEERS BENEFICIAL ASSOCIATION
AFL-CIO, NATIONAL MARITIME UNION OF AMERICA AFL-
CIO, RADIO OFFICERS UNION OF THE UNITED TELEGRAPH
WORKERS AFL-CIO & SEAFARERS INTERNATIONAL UNION
OF NORTH AMERICA AFL-CIO

No. 889,003
(Consolidated Under No. 889,002)

WESTWIND AFRICA LINE, LTD.

VS.

AMERICAN RADIO ASSOCIATION AFL-CIO, INTERNATIONAL
ORGANIZATION OF MASTER MATES AND PILOTS AFL-CIO,
NATIONAL MARINE ENGINEERS BENEFICIAL ASSOCIATION
AFL-CIO, NATIONAL MARITIME UNION OF AMERICA AFL-
CIO, RADIO OFFICERS UNION OF THE UNITED TELEGRAPH
WORKERS AFL-CIO & SEAFARERS INTERNATIONAL UNION
OF NORTH AMERICA AFL-CIO

Defendants' Answer to Plaintiffs' First Amended Petition

**DEFENDANTS' ANSWER TO PLAINTIFFS'
FIRST AMENDED PETITION FOR INJUNCTION**

To The Said Honorable Court:

Now COME Defendants by their attorneys of record and make this their answer to the amended petitions of the Plaintiffs.

I.

Defendants admit the allegations contained in Paragraph I in Plaintiffs' First Amended Petitions for Injunction.

II.

Defendants deny knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraphs II and III, except admit that the SS Theomana and the SS Northwind bear the Liberian flag, are presently afloat in the navigable waters of Harris County, Texas, and have in their employ various crew members who are foreign nationals and not members of Defendant labor organizations; Defendant labor organizations do not have any controversy concerning the terms and conditions of employment, including wages and hours, with the SS Theomana or the SS Northwind, nor do Defendant labor organizations purport to or seek to represent any of the employees on the SS Theomana or the SS Northwind.

III.

Defendants deny each and every allegation contained in Paragraph IV, except admit that Defendants are labor organizations or affiliates thereof and through their members or agents, none of which are employed or work for the SS Theomana or the SS Northwind, acting singly and

Defendants' Answer to Plaintiffs' First Amended Petition

in concert have established and participated in an informational picket line immediately proximate to the SS Theomana and the SS Northwind, which picket line advises the public of the plight of the American seamen and the threat to their work standards and jobs and asks those members of the public who sympathize with them to help preserve the job standards of the American seamen and to help preserve the American Merchant Marine.

IV.

Defendants deny each and every allegation contained in Paragraph V and demand strict proof thereof.

V.

Defendants admit the allegations contained in Paragraph VI.

VI.

Defendants deny each and every allegation of Paragraphs VII, VIII, IX, and X and demand strict proof thereof.

VII.

Defendants would show that this Honorable Court may not grant the relief requested by the Plaintiffs herein because jurisdiction over the subject matter of this dispute and over the parties thereto does not lie within the province of this Honorable Court but is pre-empted to the National Labor Relations Board by the National Labor Relations Act (29 U. S. C. A. §151, et seq.). In this regard Defendants would show that Plaintiff Windward Shipping London Limited filed an unfair labor practice charge before the National Labor Relations Board on October 29,

Defendants' Answer to Plaintiffs' First Amended Petition

1971, against all of the same parties who are Defendants here. (Case No. 23-CC-416, a copy of which is attached to this Answer).

VIII.

Defendants would further show that this Honorable Court may not grant the relief sought by the Plaintiffs because the Norris-LaGuardia Act (29 U. S. C. A. §101 et seq.) prohibits the issuance of any restraining order or temporary or permanent injunction by a State or Federal court in a peaceful labor dispute between parties in interstate commerce.

IX.

Defendants would further show that the informational picketing engaged in by Defendants is lawful and proper and in accordance with the exercise of the rights granted to them by Article I, Section 8 of the Constitution of the State of Texas and by the First and Fourteenth Amendments to the Constitution of the United States of America.

X.

Defendants would further show that the State statute under which Plaintiffs bring this proceeding, to wit, Article 5154d(4) of Vernon's Texas Civil Statutes Annotated ("Picketing") is unconstitutional on its face in that it is void for vagueness, overbroad and produces a chilling effect on the Defendants' exercise of the rights granted to them by Article I, Section 8 of the Constitution of the State of Texas and by the First and Fourteenth Amendments to the Constitution of the United States of America.

XI.

Defendants would further show that the State statute under which Plaintiffs bring this proceeding, to wit, Article

Defendants' Answer to Plaintiffs' First Amended Petition

5154d(4) of Vernon's Texas Civil Statutes Annotated ("Picketing") would be in violation of the rights granted to Defendants by Article I, Section 8 of the Constitution of the State of Texas and by the First and Fourteenth Amendments to the Constitution of the United States of America if it is applied or held by this Honorable Court to prohibit or make unlawful the conduct of informational picketing in which Defendants are engaging.

XII.

Defendants would further show that Plaintiffs may not be granted the equitable relief that they seek since they come to this Honorable Court with unclean hands in opposition to the public policy of the United States of America as set forth in 46 U. S. C. A., Section 1101 and Section 1241.

WHEREFORE, premises considered, Defendants pray that the relief Plaintiffs seek be in all ways denied, that Defendants go hence with their costs without day and that Defendants receive such other and further relief, either at law or in equity, to which they may show themselves entitled.

Respectfully submitted,

W. ARTHUR COMBS
W. Arthur Combs
Of Combs & Archer

HERMAN WRIGHT
Herman Wright
Of MANDELL & WRIGHT
Of Mandell & Wright

Of Counsel
BERTRAM PERKEL
Bertram Perkel

Defendants' Answer to Plaintiffs' First Amended Petition

UNITED STATES OF AMERICA
 NATIONAL LABOR RELATIONS BOARD
 CHARGE AGAINST LABOR ORGANIZATION
 OR ITS AGENTS

INSTRUCTIONS: File an original and 3 copies of this charge and an additional copy for each organization, each local and each individual named in item 1 with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

Case No. 23-CC-416

Date Filed October 29, 1971

1. Labor Organization Or Its Agents Against Which
 Charge Is Brought

a. Name See Attachment

...

d. Address (Street, city, State and Zip code) See
 Attachment

e. The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section 8(b), subsection(s) (4)(B) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.) Since on or about October 29, 1971, and at all times thereafter, the above-named labor organizations, by their officers, agents and representatives, engaged in or induced or encouraged employees employed by Rogers Terminal and Shipping Corporation and other employers to engage in a strike or a

Defendants' Answer to Plaintiffs' First Amended Petition

refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials or commodities or to perform any services, an object thereof being to force and require Rogers Terminal and Shipping Corporation and other employers to cease doing business with Windward Shipping London Ltd., the West Gulf Maritime Association, the Port of Houston, the Navigation District of Harris County, Texas, and Cargill, Inc. and other employers engaged in interstate and foreign shipping.

* * *

8. Full Name of Party Filing Charge Windward Shipping London Limited

9. Address of Party Filing Charge (Street, city, State and Zip code) London, England

* * *

11. Declaration

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

(Signature of representative or person making charge)

By BEN L. REYNOLDS

Ben L. Reynolds

(Title or office, if any) Attorney

Address Suite 3710 One Shell Plaza
Houston, Texas 77002

(Telephone number) 224-8380

(Date) Oct. 29, 1971

Willfully False Statements On This Charge Can Be Punished By Fine And Imprisonment (U. S. Code, Title 18, Section 1001)

Defendants' Answer to Plaintiffs' First Amended Petition

Case No. 23-CC-416

ATTACHMENT

1. American Radio Association, AFL-CIO
4101 San Jacinto
Houston, Texas
522-2788
2. International Organization of Masters, Mates and
Pilots, AFL-CIO
412 Broadway
Houston, Texas
926-1805
3. National Marine Engineers Beneficial
Association, AFL-CIO
314 Broadway
Houston, Texas
923-9424
4. National Maritime Union of America, AFL-CIO
7602 Navigation Blvd.
Houston, Texas
928-3381
5. Radio Officers Union of the United
Telegraph Workers, AFL-CIO
1346 Connecticut Avenue, N. W.
Suite 918
Washington, D. C. 20036
(202) 234-5003
6. Seafarers International Union of North America,
Atlantic, Gulf, Lakes and Inland Waters District,
AFL-CIO
Attn: Paul Drozak, Asst. Regional Director
5804 Canal
Houston, Texas 77011
928-3207

Plaintiffs' Exhibit No. 1, Stipulation of the Parties

IN THE

DISTRICT COURT OF HARRIS COUNTY

— JUDICIAL DISTRICT OF TEXAS

[SAME TITLES]

STIPULATION OF THE PARTIES

1.

The vessel Northwind is engaged in the business of international shipping and trades between United States ports and West African ports. It does not carry cargo between United States Ports. The SS Theomana is engaged in international shipping and trades between United States ports and various foreign ports. It does not carry cargo between United States ports. The cargo carried by such ships from American ports derives from American consignors in the various states of the United States and is shipped to the port of embarkation through the usual instrumentalities of interstate commerce. From time to time the ships above named regularly provender and bunker in United States ports.

2.

The vessel Northwind is a Liberian Flag vessel registered in Monrovia, Liberia, and is owned by Westwind Africa Line, Limited, a Liberian corporation. The SS Theomana is a Liberian Flag vessel registered in Monrovia, Liberia. The SS Theomana is owned by SPS Bulk-carriers, Inc., a Liberian corporation. The managing agent

Plaintiffs' Exhibit No. 1, Stipulation of the Parties

of the SS Theomana is Windward Shipping (London) Limited, a British corporation.

3.

The SS Theomana is a bulk carrier which carries bulk cargo and general cargo. The Northwind is a dry cargo vessel which carries bulk cargo and general cargo between United States and West African ports as a member of the American West African Freight Conference, a conference of foreign and U. S. shipping companies operating pursuant to an agreement filed with and approved by the Federal Maritime Commission.

4.

Pickets began picketing the vessel Theomana on October 28, 1971, and have picketed continually since that time with four pickets along the dock and at the foot of the gangway of the vessel. Pickets began picketing the vessel Northwind on October 29, 1971, with four pickets along the dock and at the foot of the gangway. All pickets are walking a contiguous area adjacent to the vessel as a collective group, all carrying the same sign and passing out the same literature or paper. The picket sign carried by each picket has a cardboard placard reading as follows:

"ATTENTION TO THE PUBLIC

The wages and benefits paid seamen aboard the vessel THEOMANA (NORTHWIND) are substandard to those of American seamen. This results in extreme damage to our wage standards and loss of our jobs. Please do not patronize this vessel. Help the American seamen. We have no dispute with any other vessel on this site.

Plaintiffs' Exhibit No. 1, Stipulation of the Parties

American Radio Association, AFL-CIO

**International Organization of Master Mates and
Pilots AFL-CIO**

**National Marine Engineers Beneficial Association
AFL-CIO**

National Maritime Union of America, AFL-CIO

**Radio Officers Union of the United Telegraph
Workers AFL-CIO**

**Seafarers International Union of North America
AFL-CIO"**

Each picket also hands out a legal size sheet, one of which is attached as Exhibit A.

5.

The picketing has been peaceful and without violence or threat of violence.

6.

It is stipulated and agreed that true copies of the following documents will be made available and may be introduced into evidence without further proof of authenticity:

SS THEOMANA

1. Crew Roll and Articles of Agreement opened at Venice on August 23, 1971.
2. Crew list.
3. Collective Bargaining Agreement with Panhellenic Seamen's Federation.
4. Collective Bargaining Certificate with Panhellenic Seamen's Federation.
5. Indonesian Seafarers' Employment Contract.

Plaintiffs' Exhibit No. 1, Stipulation of the Parties

SS NORTHWIND

1. Crew Roll and Articles of Agreement opened at Rotterdam July 1, 1971.
2. Crew list.
3. Collective Bargaining Agreement with Panhellenic Seamen's Federation.
4. Collective Bargaining Certificate with Panhellenic's Seamen's Federation.
5. Collective Bargaining Agreement with the Sierra Leone Seamen's Union.

7.

It is stipulated that the captains and chief engineers of each ship will be made available to testify at the trial of the application for injunctive relief.

8.

It is stipulated that a charge has been filed with the National Labor Relations Board, 23rd Region, Houston, Texas, and is now pending before and being investigated by the Board, a true copy of said charge is attached hereto as Exhibit B.

9.

There is no labor dispute between the owners represented by the Captain and the crews of the vessels SS Theomana and SS Northwind or the Panhellenic Seamen's Federation or the Sierra Leone Seamen's Union who represent the crews of the SS Theomana and/or SS Northwind or on any Indonesian Seafarers' Employment Contract.

Plaintiffs' Exhibit No. 1, Stipulation of the Parties

10.

The crews and officers of the SS Theomana and the SS Northwind are foreign nationals.

11.

This stipulation is not exclusive and either party may offer evidence on any admissible subject which is not in conflict with this stipulation.

Agreed this 7th day of November, 1971.

Attorneys for Defendants

HERMAN WRIGHT

Herman Wright

Of MANDELL & WRIGHT

W. ARTHUR COMBS

W. Arthur Combs

Of COMBS & ARCHER

BERTRAM PERKEL

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Ben. L. Reynolds

Of ROYSTON, RAYZOR & COOK

Plaintiffs' Exhibit No. 1, Stipulation of the Parties

**EXHIBIT A, ANNEXED TO STIPULATION
TO THE PUBLIC**

American Seamen have lost approximately 50% of their jobs in the past few years to foreign flag ships employing seamen at a fraction of the wages of American Seamen.

American dollars flowing to these foreign ship owners operating ships at wages and benefits substandard to American Seamen, are hurting our balance of payments in addition to hurting our economy by the loss of jobs.

A strong American Merchant Marine is essential to our national defense. The fewer American flag ships there are, the weaker our position will be in a period of national emergency.

PLEASE PATRONIZE AMERICAN FLAG VESSELS, SAVE OUR JOBS, HELP OUR ECONOMY AND SUPPORT OUR NATIONAL DEFENSE BY HELPING TO CREATE A STRONG AMERICAN MERCHANT MARINE.

Our dispute here is limited to the vessel picketed at this site, the SS

American Radio Association AFL-CIO

International Organization of Master Mates and Pilots AFL-CIO

National Marine Engineers Beneficial Association AFL-CIO

National Maritime Union of America AFL-CIO

Radio Officers Union of the United Telegraph Workers AFL-CIO

Seafarers International Union of North America AFL-CIO

Plaintiffs' Exhibit 18—Additional Stipulation of the Parties

IN THE
DISTRICT COURT OF HARRIS COUNTY
164TH JUDICIAL DISTRICT OF TEXAS

[SAME TITLES]

ADDITIONAL STIPULATION OF THE PARTIES

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for plaintiffs and the attorneys for defendants that if representatives of the Sierra Leone Seamen's Union and Pan Hellenic Seamen's Federation were called to testify, they would testify that they are selected by the employees working under the Sierra Leone and Pan Hellenic Seamen's agreements for the purposes of collective bargaining.

Agreed this day of November, 1971.

Attorneys for Defendants

HERMAN WRIGHT

Herman Wright

Of MANDELL & WRIGHT

W. ARTHUR COMBS

W. Arthur Combs

Of COMBS & ARCHER

BERTRAM PERKEL

Bertram Perkel

Attorneys for Plaintiffs

W. D. DEAKINS

W. D. Deakins

Of VINSON, ELKINS, SEARLS & SMITH

BEN L. REYNOLDS

Excerpts From Transcripts of Proceedings

PROCEEDINGS OF NOVEMBER 8, 1971

(14)*

. . .

Mr. Deakins: Your Honor, now I first offer a written stipulation of the parties executed yesterday in 11 numbered paragraphs, signed by attorneys

(15)

for all of the parties, dealing with the matter pertinent to the issues in this case. Does the Court want me to read these into the record, too?

The Court: Not if it's in form to be filed in the papers. I can read it myself.

Mr. Deakins: Yes, sir, it is in form.

I will now offer this as Plaintiffs' Exhibit No. 1.

The Court: Please have the reporter mark it as Plaintiffs' Exhibit No. 1.

(Plaintiffs' Exhibit No. 1 was marked.)

Mr. Perkel: No objection.

The Court: Plaintiffs' Exhibit No. 1, being a stipulation of the parties, is admitted without objection.

Mr. Deakins: Your Honor, I now ask that there be marked for the purpose of identification as Plaintiffs' Exhibit No. 2 a document on NLRB Form 601 entitled Withdrawal Request, signed in behalf of Windward Shipping London Limited by Ben Reynolds, Attorney.

Mr. Perkel: I have seen it, Your Honor. No objection.

(Plaintiffs' Exhibit No. 2 was marked.)

Mr. Deakins: I now offer Plaintiffs' Exhibit No. 2.

* Numbers in parentheses refer to pages of the Original Record, parts 2-2C.

Colloquy

(16)

The Court: Do you have any objection to that, Mr. Perkel?

Mr. Perkel: No, Your Honor.

The Court: Plaintiffs' Exhibit No. 2 is admitted without objection.

Mr. Deakins: Mark this, please.

(Plaintiffs' Exhibit No. 3 was marked.)

Mr. Deakins: Your Honor, I now offer Plaintiffs' Exhibit No. 3, a letter dated November 8, 1971, to Arthur Mandell, Attorney, Mandell & Wright, and W. Arthur Combs, Combs & Archer, both of Houston, Texas, signed by Clifford W. Potter, Regional Director of the National Labor Relations Board, Region 23, Houston, Texas.

Mr. Perkel: No objection, Your Honor.

The Court: Plaintiffs' Exhibit 3 is admitted without objection.

Mr. Deakins: The additional stipulations, Your Honor, the first is as follows: Members of the defendant unions are not employees of the plaintiffs Windward Shipping London Limited or SPS Bulkcarriers Corporation, or Westwind Africa Line, Limited. The defendant unions do not represent any officer or crewman employed on any vessel of the plaintiffs.

I now offer that stipulation.

(17)

Mr. Perkel: No objection, Your Honor.

The Court: That will be received and made part of the record.

Mr. Deakins: The second proposed stipulation is as follows: A collective bargaining agreement is currently in

Colloquy

effect between the plaintiffs and Pan Hellenic Seamen's Federation covering crew members on both of the vessels, the Northwind and the Theomana. (1) Except in the case of the Theomana, the Indonesian members of the crew are covered by the Indonesia Seafarers' contract, which is subject to English law. (2) With respect to the Northwind, the balance of the crew, that is balance other than the Greek members of the crew, being West Africans, are covered by the Sierra Leone Seamen's Union's contract. The above unions represent the employees under the contracts concerning wages, overtime, leaves and other terms and conditions of service.

Mr. Perkel: No objection to that, Your Honor.

The Court: That stipulation will be admitted as part of the record.

Mr. Deakins: The third proposed stipulation is as follows: If the plaintiffs' representatives were called to testify, they would testify that they had

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no notice of the intention of the defendants to picket the vessels until after their arrival of the vessels at Houston, Texas, and the partial loading of the vessels had been completed.

Mr. Perkel: Your Honor, there is no objection to these so testified stipulations which we have entered into, except we have also agreed in connection with them that at some point in time they are subject to objection on the ground of relevance.

The Court: In other words, you are agreeing that the witness, if he was on the witness stand, would so testify if he were permitted to in face of your objection as to relevance.

Mr. Perkel: Yes, Your Honor.

Colloquy

The Court: Is that satisfactory?

Mr. Deakins: Satisfactory, Your Honor.

The Court: Then that stipulation will be made part of the record.

Mr. Deakins: The next proposed stipulation is as follows: Under Liberian law and Greek law when an employer and a labor organization have entered into a labor contract, it is unlawful for an employer to bargain with or enter into a labor contract pertaining to such seamen with any other labor organization.

Mr. Perkel: We agree to that, Your

(19)

Honor.

The Court: By agreeing to that, do you intend to waive the requirement of the Rules of Civil Procedure in Texas which requires that the statutes be set out in writing in the record before the Court can take judicial notice of it?

Mr. Perkel: Your Honor, we were shown copies of the various statutes and essentially what we are waiving here is the right to have proof of foreign law made, that I accept the copies which were shown to me and which will be submitted to this Court, I believe Sections 354 and 357 under Liberian law, and they need not be put through the burden of proving the foreign law.

The Court: Very well. That is agreeable to the Court. The stipulation will be made part of the record.

Mr. Deakins: The next proposed stipulation is as follows: The replacement value of the SS Theomana is in excess of \$8,000,000. The replacement value of the SS Northwind is approximately \$5,700,000.

Mr. Perkel: No objection to that, Your Honor.

The Court: The stipulation will be received.

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Mr. Deakins: If representatives of the plaintiffs were called to testify, they would testify that there is no United States AID cargo or PL 480 cargo to be loaded on the SS Northwind or the SS Theomana at the City of Houston, Texas. The witnesses would further testify that the wheat cargo to be loaded on the SS Northwind has an f.o.b. value of \$877,000, which is to be paid for in cash upon surrender of bills of lading.

The witness would further testify that the consignee of these wheat cargo, Flour Mills of Nigeria, Limited, has purchased, paid for in cash and shipped from the United States Gulf ports in the months of August through October, 1971, more than 126,000 long tons of wheat at an f.o.b. cost of more than \$8,400,000.

Mr. Perkel: No objection, Your Honor.

The Court: That stipulation will be received.

Mr. Deakins: The next proposed stipulation is as follows, Your Honor.

The Theomana is in the chartering or tramp service and is suffering damage by reason of being picketed, which damage is incapable of reasonable calculation. The charter market fluctuates daily.

Mr. Perkel: No objection, Your Honor.

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The Court: This is an incomplete stipulation, gentlemen, which I am unable to follow. You say she is in the tramp service or charter service. What is the present status of the vessel? Is it on charter or is it in the tramp service available to anybody who will hire it?

Mr. Reynolds: Right now, Your Honor, the vessel is on charter but this will be terminated shortly.

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The Court: Is she chartered for the voyage that she is about to begin?

Mr. Reynolds: Yes, sir.

The Court: That is, when she leaves Houston.

Mr. Reynolds: Yes, sir.

The Court: She is certainly not available until that voyage is completed.

Mr. Reynolds: No, sir.

The Court: What relevance does the charter have, or being a tramp have if she is under charter at this time? This is a temporary injunction hearing, gentlemen. We are concerned with the status at the present time, aren't we?

Mr. Reynolds: Yes, sir, but she cannot be available. They made deals ahead of time, Judge,

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for chartering, and she can't make a deal ahead of time until she clears this port.

The Court: All right.

Mr. Deakins: Completes this present charter.

The Court: All right.

Mr. Reynolds: Until she sails from this port to complete her present charter.

The Court: The Court would suggest, then, that any delay at Houston would delay the date at which she would be available for further charter. Is that what you are telling me?

Mr. Reynolds: Yes, sir.

The Court: Go ahead, please.

Mr. Deakins: The next proposal, Your Honor, is as follows: Longshoremen and members of other unions at the Port of Houston who service, work and assist the vessels have refused to perform their usual tasks rela-

Colloquy

tive to the vessels herein by refusing to cross the picket line established by the defendants. These union members include, but are not limited to, radar maintenance personnel and servicemen, provenders, tug operators and crews, linemen, pilots, and miscellaneous deliverymen.

Mr. Perkel: That is acceptable, Your

(23)

Honor, except to the extent that both parties are aware that with respect to pilots both situations have abided. There have been some pilots who have agreed to respect the line established by the unions and other pilots who have not. It is just that there seems to be some suggestion that this particular vessel is having some difficulty in pilots, and I don't want the stipulation to extend as a rule that all pilots are not crossing our line.

The Court: Is it necessary to your case to have pilots in this stipulation at all?

Mr. Deakins: No, Your Honor.

Mr. Reynolds: No, Your Honor.

The Court: If it would be so difficult to distinguish between those who do and those who don't, it seems to me it would be simple to leave pilots out of that stipulation completely. Would that be satisfactory?

Mr. Deakins: Correct, Your Honor. We will amend the stipulation to exclude the word "pilots."

The Court: Let the record show the stipulation is amended to exclude pilots.

As such, is it satisfactory to the defendants now, Mr. Perkel?

Mr. Perkel: Yes, Your Honor.

(24)

The Court: Go ahead, please.

Colloquy

Mr. Deakins: The next proposed stipulation is as follows, Your Honor: If witnesses were called on behalf of the Westwind Africa Line, Limited, to testify, they would testify that: (1) The vessel Northwind is engaged in the liner service between the United States and West African ports; (2) Prompt arrival and delivery of cargo in the liner service is of great concern to consignors and consignees of said cargo.

Mr. Perkel: That is acceptable, Your Honor.

The Court: It is agreeable to the Court.

Mr. Deakins: The next proposed stipulation is as follows, Your Honor: To the knowledge of the plaintiffs, the defendants have made no demand upon any official of the plaintiff companies by oral or written communication addressed to the plaintiff companies seeking to represent the employees of plaintiff companies working on the SS Theomana and the SS Northwind.

Mr. Perkel: That is acceptable, Your Honor.

The Court: It is acceptable to the Court.

(25)

The stipulation will be made part of the record.

Mr. Deakins: That is all.

The Court: Do the defendants have any stipulations that they have agreed upon that they would like to have in the record at this time?

Mr. Perkel: Not at this time, Your Honor.

The Court: Mr. Deakins, you may go forward with your proof on your application for temporary injunction, please.

Mr. Deakins: Call Capt. Groeneveld.

The Court: Capt. Groeneveld, will you come around, sir?

J. M. Groeneveld—for Plaintiffs—Direct

J. M. GROENEVELD, a witness called on behalf of the plaintiffs, having been first duly sworn, testified upon his oath as follows:

Direct examination by Mr. Deakins

Q. State your full name, please, sir. A. J. M. Groeneveld.

Q. How do you spell that? A. G-r-o-e-n-e-v-e-l-d.

Q. By whom are you employed?

(26)

A. I am the port captain for Westwind Africa Line for Texan ports.

Q. Where do you live, Captain? A. In Houston.

Q. What has been your experience in the shipping business and in the operation of ships? A. I have been a ship captain. I have been sailing for 22 years.

Q. What capacities have you served on various vessels? A. As sea captain.

Q. Are you familiar with the vessel the Northwind? A. Yes.

Q. Describe that vessel. A. She is a bulkcarrier, five holds.

Q. What is the size of the vessel, generally? A. She is about 20,000 dead weight.

Q. Have you served on, or are you familiar with vessels of similar class and size? A. Yes.

Q. Have you had occasion to determine whether the Northwind had commenced to load cargo at the time when she was picketed? A. No, she never loaded anything any more after she was picketed.

Q. When did the Northwind dock in Houston?

(27)

A. Friday morning at 3:00 o'clock, or the 29th of October.

J. M. Groeneveld—for Plaintiffs—Direct

Q. What occurred after that with reference to whether or not she was loaded? A. We started working with two gangs at 7:00 o'clock in the morning.

Q. Two longshore gangs? A. Two gangs.

Q. What were you loading? A. Wheat.

Q. Where were you loading? A. At Equity Elevator.

Q. What occurred after that with reference to the loading of the vessel? A. We loaded until 12:00 o'clock, and after 12:00 o'clock the longshoremen went for lunch, and after they came back we had pickets there at the gang.

Q. Were the picketers carryings signs? A. They were carrying a sign and carrying the American flag.

Q. What occurred with reference to whether or not the longshoremen worked the vessel thereafter? A. The longshoremen didn't want to cross the picket lines.

Q. Could you tell me what the cargo was that the
(28)

Northwind was lading at that time? A. Wheat.

Q. Do you know how much had been loaded on at the time the longshoremen ceased to perform any duties? A. About 6,500 tons.

Q. How much of the vessel is loaded? A. She was supposed to load 11,400 tons.

Q. How is this loaded with reference to the various compartments of the ship? A. In three different hatches, so the vessel is unseaworthy right now.

Q. Sir? A. We loaded in three different hatches.

Q. Which hatches did you load into? A. In two, four and five.

Q. What would you have done with reference to Hatches 1 and 2 if you had continued to load as anticipated? A. You couldn't load there because we had to discharge coffee for Houston first.

J. M. Groeneveld—for Plaintiffs—Direct

Q. But you could not load them at the Equity dock?
A. No.

Q. So you had loaded three hatches, is that right? A. Right.

Q. And then what occurred with reference to whether or not the vessel was moved?

(29)

A. Well, because the longshoremen didn't want to cross the picket lines, we tried to shift the vessel to City Docks 48 to discharge the coffee.

Q. Did you call for a tug to assist you in shifting? A. Yes, we called for Friday night, called pilots and tugs for 9:00 o'clock that night.

Q. And did that tug arrive? A. The tugboats arrived and the pilot arrived, but the tugboats, after they saw the sign, because the surge line of the tugboat was put on the sign, they pulled out.

Q. Did the pilot board the vessel? A. The pilot boarded the vessel, but after he heard from the tugboats that they were not going to assist the ship—

Q. Then he left? A. He left the ship.

Q. Were you subsequently able to move the vessel?
A. No, not without a pilot.

Q. But did the vessel subsequently move to another dock? A. No.

Q. How about the following day? A. The following day we got a pilot and tugboats and the tugboats pulled off again, but the pilot

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agreed to take the ship out with the captain without tugboats.

Q. Did you move the vessel out to the channel then?
A. That's right, and then she moved to City Docks 48.

J. M. Groeneveld—for Plaintiffs—Direct

There were no pickets there so the line men and the tug-boats helped the ship dock.

Q. And thereafter did picketing occur? A. Well, we had a gang of longshoremen ordered there for 7:00 o'clock, and I was talking to the walking boss of the longshoremen and he said, "Well, you are lucky that you don't have any pickets here so you can work here."

Mr. Perkel: Objection, Your Honor; hearsay objection.

The Court: The objection will be sustained. I will disregard what the man told him.

What happened?

A. After the ship docked and in a few minutes after that the pickets showed up and the longshoremen said, the walking boss said, "I am sorry, I cannot cross this picket line."

Mr. Wright: Same objection, Your Honor.

The Court: You can't tell me, Captain, what somebody said to you unless it is one of the defendants in this lawsuit or a representative of

(31)

them, but you can tell me what happened. Please do not try to tell me something somebody told you, Now go ahead and answer his question.

Q. Captain, tell me, did you observe the longshoremen down there at the picket sign? A. They were there.

Q. Did they come to the picket sign as ordered? A. They went to the picket sign.

Q. Did they come aboard and work? A. No.

Q. Did they leave after that? A. They left after they had seen the picket sign.

Q. What was the purpose of moving down there, shift-

J. M. Groeneveld—for Plaintiffs—Cross

ing down there? Was that for the purpose of unloading the coffee? A. That's right.

Q. Was the coffee unloaded? A. No, never touched.

Q. What are your duties with reference to the disposition of cargo and vessels that are being loaded? A. Well, I figure out stability for the ships and order gangs and plan the cargo on the ship.

Q. Why is that necessary? A. Well, because of the seaworthiness of the ship.

Q. Do you mean to say, then, that if the cargo isn't

(32)

properly loaded the ship isn't seaworthy? A. That's right.

Q. Now, with Hatches 3, 4 and 5 loaded with wheat—A. 2, 4 and 5.

Q. Or partially loaded, is that right? A. That's right.

Q. And Hatches 1 and 2, are they fully loaded or partially loaded with coffee? A. Partially loaded with coffee.

Q. In your opinion, is the ship seaworthy? A. No.

Q. Do you mean to say that in that connection your opinion is that that vessel could not properly sail? A. That's right, she cannot sail.

Mr. Deakins: You may cross examine.

The Court: Mr. Perkel.

Mr. Perkel: Thank you, Your Honor.

Cross examination by Mr. Perkel

Q. Captain, when did you move the vessel to another point in the harbor? A. Saturday at 5:30 from Equity, and she docked 10 minutes past 7:00.

(33)

Q. Without tugs? A. She docked with tugs. She undocked without tugs.

J. M. Groeneveld—for Plaintiffs—Cross

Q. The vessel arrived and docked at some point? A. Right.

Q. And then subsequently you moved that vessel to another point in the harbor. The next day, was it? A. No, no.

Q. Two days later? A. No, we never moved it. You are confused now. You mean when the ship came into Houston?

Q. Yes, it came up to the dock. A. Oh, the first time.

Q. The ship came into Houston and came up to a dock? A. Right.

Q. At that point you started to unload the vessel? A. Excuse me.

Q. You started to unload the vessel? A. No, we started to load.

Q. Started to load it? A. Right.

Q. And you proceeded partially through Hatches 2, 4 and 5, is that correct? A. Right.

Q. And then while you were proceeding partially through it one day pickets appeared?

(34)

A. Yes.

Q. And the longshoremen saw the picket signs and didn't cross the lines, is that correct? A. Right.

Q. And then I thought you testified that you then moved it, your ship, to another pier? A. The next day.

Q. The next day? A. Yes.

Q. Now, you moved it with partially loaded Hatches 2, 4 and 5? A. Right.

Q. Which you testified made the ship unseaworthy, is that correct? A. Right. You don't have to be seaworthy in shore waters.

Q. Notwithstanding the fact that you determined the ship to be unseaworthy, you moved that vessel without

Richard Henrikson—for Plaintiffs—Direct

tugs and just a pilot to another point in the harbor, is that correct? A. Yes.

Q. Now, even at that point you testified that the pickets found you once again, is that correct? A. Right.

Q. And the longshoremen which you had ordered there
(35)

again refused to work? A. They didn't refuse to work, they refused to cross the picket line.

Q. Did you at that time see what had happened when the longshoremen approached the picket line? A. Yes.

Q. Could you describe for us what you saw? A. Well, they picked up the pamphlets they had there on the pallet and they saw the sign and they discussed it and then they left the dock.

Q. Captain, what is your position for the Westwind in Houston? A. I am port captain for the Texan ports.

Q. Did any of the defendant unions which are picketing you make a demand upon you to represent the employees on the Westwind? A. No.

Q. I am sorry, is it the Northwind? A. It's the Northwind.

Mr. Perkel: I have no further questions, Your Honor.

. . .

(45)

RICHARD HENRIKSON, a witness called on behalf of the plaintiffs, having been first duly sworn, testified upon his oath as follows:

Direct examination by Mr. Reynolds

Q. Mr. Henrikson, would you please state your full name?
A. Richard Henrikson.

Richard Henrikson—for Plaintiffs—Direct

Q. How are you employed, sir? A. I am superintendent of the Rogers Terminal & Shipping Corporation.

Q. What relationship does Rogers Terminal & Shipping Corporation have to the vessel Theomana? A. They are the stevedore and the vessel agent.

(46)

Q. What is your specific job down at Rogers Terminal? A. I am the stevedoring superintendent and the vessel agent.

Q. In that capacity, do you have a duty to prepare a business record called a port log and statement of facts?

A. Yes, sir.

Q. Have you prepared such a record in this situation?

A. Yes, sir.

Q. Do you usually do that when you have a vessel at your dock that is under charter party? A. No, I usually do that when we are the agents for the vessel that is at our dock.

Q. When you are the agent you prepare this kind of a document? A. Yes, sir.

Q. Would you refer, please, to that document if you need to.

Mr. Reynolds: We would offer into evidence at this time that document, which is Plaintiffs' Exhibits 4 and 4-A, Your Honor.

Mr. Perkel: No objection, Your Honor.

The Court: Plaintiffs' Exhibits 4 and 4-A are admitted without objection. Tell me the title of that document again, sir.

(47)

A. It's the port log and statement of facts for the Liberian motor vessel Theomana.

Richard Hewrikson—for Plaintiffs—Direct

The Court: Now you may refer to it in answering Counsel's questions if you need to.

Q. (By Mr. Reynolds) Mr. Henrikson, when did this vessel arrive? A. This vessel arrived in Houston on the 23rd of October at 1830 hours.

Q. Give us briefly the process of loading to the time pickets were first observed. A. Sir?

Q. What loading occurred before pickets arrived? A. Well, the vessel arrived on Saturday, the 23rd; labor was ordered to commence loading the vessel on Sunday, October 24.

Mr. Perkel: Your Honor, at this point I must object. No problem with the witness using the document to refresh his recollection if he needs to, but I saw him at this point looking down and reading from it, and I wish he would be instructed.

The Court: The instrument is in evidence, is it not, Mr. Perkel?

Mr. Perkel: It is, Your Honor.

The Court: Very well. Then if it is in

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evidence, I have either got to read it or listen to what he says about it. The objection will be overruled.

If you need to read it, read it. If you can tell me from your memory, tell me from your memory.

A. Okay.

On October 23 labor was ordered to start loading the Theomana at Cargill for the following morning, 7:00 o'clock a.m. At 7:00 o'clock, Sunday, October 24, two gangs reported to the ship and we commenced loading the Theomana, and we loaded until 11:30 on the 24th.

Richard Henrikson—for Plaintiffs—Direct

On October 25 we ordered labor again for the morning of the 26th to resume loading, and we received two gangs on the 26th, the same as we had ordered, and we resumed loading. We loaded until 12:00 o'clock and then took a meal hour from 12:00 to 1:00, and we came back at 1:00 o'clock and we worked one gang until 4:15 and the second gang until 4:30 that afternoon.

On the 27th we ordered labor for a 7:00 o'clock start that night. We received the two gangs that we ordered, and we loaded until 11:00 o'clock that evening.

(49)

On Thursday we were loading another vessel on the other loading berth and approximately 5:30 that night pickets representing the various maritime unions came up and set up a picket line at the gangway to the Theomana.

Q. (By Mr. Reynolds) Up to this time, approximately how much cargo had been loaded, do you know? A. Approximately 20,800 tons.

Q. Do you know how many tons you were to load totally in this vessel? A. We planned on loading 28,300 tons.

Q. Do you know how many hatches remained slack at this time? A. I believe No. 1, No. 3 and No. 6. It's a seven-hatch ship.

Q. Did the pickets remain there continually up to this time? A. Yes, sir, the pickets have been there since 5:30 on October 28.

Q. Has there been any further loading by the longshoremen? A. No, sir.

Q. Have the longshoremen refused to go aboard the vessel? A. Yes, sir. We have ordered labor at various times

(50)

between the 28th of October and the present day, and labor

Richard Henrikson—for Plaintiffs—Direct

has reported for work but they have refused to cross the picket line. Consequently, we could not load the vessel.

Q. Has labor advised you at any time as to why they are refusing to cross the picket line or why they are not working? A. We have ordered labor from the local. We have ordered labor from ILA Local 1273, and when we have placed the order the business agent has asked if the pickets are still up and we have advised him yes, the pickets are still up and we have not received labor.

Q. Would you look at those two photographs there, Plaintiffs' No. 5 and Plaintiffs' No. 6 Exhibits, and tell us whether or not they represent the pickets that are down there? A. This photo here is an exact reproduction of the picket signs that are on the gangway, P-6.

Mr. Combs: May we see them?

Mr. Reynolds: Surely. We haven't offered them yet, but go ahead and look at them.

Q. You have identified what has been marked as Plaintiffs' Exhibit No. 6 as a photograph of the signs that are down there?

(51)

A. Yes, sir.

Mr. Reynolds: We offer this into evidence, Your Honor, Plaintiffs' No. 6. We will wait on Plaintiffs 5. It's about the Theomana.

The Court: Plaintiffs' 6 is offered. Do you have any objection, Mr. Perkel?

Mr. Perkel: Your Honor, I have no objection to that providing it's being offered just to show the contents of the sign instead of being used to picket the vessel in question, and by all means I would agree to that.

Richard Hewrikson—for Plaintiffs—Direct

The Court: Isn't that all it shows?

Mr. Perkel: I don't know. If that's what it's being offered for, that's fine.

The Court: For what purpose is the exhibit being offered, Mr. Reynolds?

Mr. Reynolds: To show the signs and there is a flag in the picture down there that are being used on the scene.

The Court: To show signs and there is a flag that are being used. Now, what is the purpose of the offer, please?

Mr. Reynolds: To show these items demonstratively to the Court, Your Honor.

(52)

The Court: Do you have any objection for that purpose?

Mr. Perkel: None whatsoever, Your Honor.

The Court: Plaintiffs' Exhibit 6 is admitted for the purpose offered.

May I see them, please, unless you are going to use them again?

Mr. Reynolds: No.

I will offer 5 at this time, although this witness has not identified it. It's got the other vessel's picket sign on it. I would like to get them in.

Mr. Perkel: We will agree that this is a sign picketed by the Northwind and represents a sign being carried.

Mr. Reynolds: We will offer both, Your Honor, at this time.

The Court: Plaintiffs' Exhibit No. 5 is admitted without objection.

Colloquy

Q. (By Mr. Reynolds) Mr. Henrikson, the port log which we have put into evidence has some detail in it with respect to when labor was called and when it did not show up, is that correct? A. Yes, sir.

. . .

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The Court: Is Mr. Henrikson back this morning, or is it necessary for him to be here?

Mr. Reynolds: Yes, we will have him back in just a moment. I think we ought to proceed with the stipulation first, Your Honor.

The Court: Very well. Go ahead.

Mr. Reynolds: I believe Mr. Deakins has the best notes for the stipulation, Your Honor.

The Court: Please dictate the stipulation to the reporter.

Mr. Deakins: I think I can do this, Your Honor.

Your Honor, the parties have met off the record and have agreed to a stipulation which I shall endeavor to state from my notes.

In connection with the Northwind, the defendants have agreed that the Northwind shall be permitted to fill the two holds that are still slack in order that the vessel will become seaworthy and that they will be permitted by the union taking down the picket line to provender, secure safety service, such bunkering and lubricants as they need.

It has been called to my attention that the stipulation with reference to the Northwind is that holds Nos. 2 and 5 will be filled in order to make the

(58)

vessel seaworthy, and the captain has agreed that the vessel will be seaworthy in such condition.

Colloquy

In connection with the Theomana, the union has agreed that, if necessary, it will permit and abide by a survey by the National Cargo Bureau as to what the requirements are to make the vessel seaworthy, and in order to do so it will take down its picket line and the Theomana will be permitted to load such bulk cargo as is necessary to make the vessel seaworthy considering the circumstances which were detailed yesterday in connection with the condition of the vessel as it has been sitting at the pier in Houston. The National Cargo Bureau will determine what is necessary to complete the loading of the vessel so as to make it seaworthy.

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The Court pointed out in a conference that we had that, of course, it was the province of the master to ascertain, regardless of what the National Cargo Bureau says, whether the vessel is seaworthy, and we will make certain that in accordance with the instruction of the Court, the master will consent to the determination of the National Cargo Bureau with reference to the seaworthiness of the vessel, the Theomana.

In that connection, the Defendants have agreed that the Theomana can provender, secure safety service and bunkering and lubricants and such other necessary services as are indicated to permit it to become seaworthy and safe.

Incidentally, it was also agreed that if the National Cargo Bureau directs, the vessel Theomana will load cargo, bulk cargo, a minimal amount, to make the vessel seaworthy.

No. 2. Representation of the Defendants will be permitted to board the vessel Theomana with the

Colloquy

representatives of the National Cargo Bureau when the survey is made, in order to see that the National Cargo work is properly done and nothing more.

Three. It is further stipulated that each ship intends to return to the Port of Houston at

(60)

some unspecified date in the future, or some other United States port, and that the Defendants are threatening and have threatened to picket such vessels upon their return, and that when and if such vessels return, the Defendants will picket those vessels.

Four. It is also understood and agreed and stipulated by the parties that this cause of action will be converted to and transferred to a proceeding on the merits and that, with the indulgence of the Court, the matter will be adjourned, subject to putting on two or three witnesses this morning, to be resumed at 1:30 in the afternoon on the 29th day of November, 1971, so that the hearing can then be completed without delay.

It is further stipulated by the parties that no evidence will be offered in derogation of the stipulation which we have agreed to above.

Further, it is stipulated that in the event that the Defendants voluntarily discontinue their nationwide practice of picketing of foreign flag vessels nationwide or in the Port of Houston, then this matter may be dismissed without prejudice and with each party bearing its own costs.

(61)

Mr. Deakins: It has further been stipulated by the parties that in the event of the violation by the defendants of this agreement that the parties

Richard Henrikson—for Plaintiffs—Cross

plaintiff may apply to this court for temporary restraining order upon notice to local counsel for the defendants of such application and that the matter will be heard forthwith by the Court to ascertain the violation of this stipulation made in open court or not whichever the case may be.

Whether this is clear or not I don't know, but the parties are in agreement, and it is stipulated, that the pickets will be withdrawn in order that the parties will be able to comply with the foregoing stipulation and agreement.

Mr. Perkel: Your Honor, on behalf of the defendants, that is an accurate representation of the agreement of the parties, and we agree with the stipulation as stated for the record.

The Court: Very well. The stipulation is satisfactory to the Court, and it will be entered of record in this case.

. . .

(63)

RICHARD HENRIKSON, the witness on the stand at the time of adjournment, called on behalf of the defendants [sic], having been previously sworn, resumed the stand and testified further upon his oath as follows:

Cross examination—(Cont'd.) by Mr. Perkel

Q. Mr. Henrikson, did you see any of the pickets at the vessel Northwind? A. No, sir.

Q. How about at the Theomana? A. Yes, sir.

Q. Did you approach any of them at any time? A. No, sir.

Q. Were you made aware of what they were doing by others? A. I didn't talk to them. I saw them on the dock.

Richard Henrikson—for Plaintiffs—Cross

Q. Did you see what they were doing? A. Yes, sir. They were marching up, or they came down to the dock with their picket sign and they

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set up their picket.

Q. How many were there? A. When they came down I counted five, the day they came down, and the number has fluctuated.

Q. Were they all picketing at one time, or were two resting and two walking, or three resting? A. Well, I have seen times when there have been no pickets down there other than the picket sign.

Q. Did you notice whether they handed out any literature? A. I was handed a piece of, or one document.

Q. I would like you to look at Exhibit A next to Plaintiffs' Exhibit 1 in evidence and ask you whether this is the document that you saw? A. Yes, this is a copy of the document I have seen.

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Q. Did any of the pickets ever come up and speak to you? A. Not on the dock, no. I believe one day one of the pickets didn't necessarily speak to me; I wasn't talking to him, but one of the pickets was in our office with the captain.

Q. Do you know what they were doing then? A. Pardon?

Q. Do you know what they were doing then? A. No. The captain was up trying to get onto the telephone, to talk on the telephone, and I was in my office, and I noted that one man represented himself as being one of the pickets.

Q. To your knowledge, was a demand made upon you or any other official of the company for representation

Richard Henrikson—for Plaintiffs—Cross

rights to these employees of yours on the Theomana? A.
No, not to my knowledge.

. . .

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Mr. Reynolds: P-12 is the crew roll and articles of agreement for the vessel Northwind, which we will offer into evidence at this time.

Mr. Perkel: No objection, Your Honor.

The Court: It is admitted without objection.

(Plaintiffs' Exhibit No. 12 was admitted into evidence.)

Mr. Reynolds: P-13 is the certificate that the vessel Northwind has a collective agreement with the Pan Hellenic Seamen's Federation. We offer it into evidence at this time.

Mr. Wright: Is this one we do not have a copy of again?

Mr. Reynolds: I think I gave you a copy of it, Mr. Wright. It's a very small piece of paper. This is the original of it.

Mr. Perkel: It's in here.

Mr. Wright: I am sorry.

Mr. Perkel: No objection, Your Honor.

The Court: It is admitted without objection.

(Plaintiffs' Exhibit No. 13 was admitted into evidence.)

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Mr. Reynolds: P-14 is the crew list of
the vessel Northwind, which we offer into evidence at this time.

Mr. Perkel: No objection.

Colloquy

The Court: It is admitted without objection.

(Plaintiffs' Exhibit No. 14 was admitted into evidence.)

. . .

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Mr. Perkel: Let me have these marked.

(Defendants' Exhibits Nos. 1 through 7, inclusive, were marked.)

Mr. Perkel: Your Honor, if I may, I will describe them for you.

Defendants' 1 is the collective bargaining agreement between various companies and the National Maritime Union.

Defendants' 2 is the collective bargaining agreement between various contracted companies and the American Radio Association.

Defendants' 3 is a collective bargaining agreement between various contracting companies and the Radio Officers Union.

Defendants' 4 is a collective bargaining agreement between various contracting companies and the American Radio Association.

Defendants' 5 is a collective bargaining agreement between the—

The Court: Excuse me a minute, Counsel. It seems to me that you have two of the same union. D-2 is an agreement with the American Radio Association.

Mr. Perkel: I'm sorry, Your Honor. There are two of the same agreement, except one covers dry cargo and passenger vessels—that is D-2.

Colloquy

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The Court: D-2 is dry cargo?

Mr. Perkel: Yes. And D-4 is East Coast Tanker Companies.

The Court: East Coast Tanker Companies?

Mr. Perkel: Correct, Your Honor.

D-5 is the dry cargo agreement between various companies and District 1, Marine Engineers Beneficial Association.

D-6 is the standard freight ship agreement between Seafarers International Union and various contracted companies.

D-7 is a report of the United States Department of Commerce, Maritime Administration, entitled "Marad 1970. Year of Transition."

At this point I will offer them as evidence, Your Honor, in this proceeding, subject, as I understand it, at least as to D-7, at such time as it is raised in this proceeding, to a motion to strike on the grounds that it is not relevant to this proceeding.

Mr. Deakins: Your Honor, we haven't had an opportunity to look at these. We were just handed them.

If the Court please, we will agree to the stipulation that we can raise the question of

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relevancy or any other pertinent objection to these documents possibly in the morning.

The Court: Very well. Counsel will be given an opportunity to examine them, and the Court will reserve the ruling on the admissibility until after counsel has had that opportunity.

• • •

Bertram Gottlieb—for Defendants—Direct

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BERTRAM GOTTLIEB, called as a witness by the defendants, having been first duly sworn, testified upon his oath as follows:

Examination by Mr. Perkel

Q. Mr. Gottlieb, what is the position you presently hold? A. I am the director of research in the Transportation Institute in Washington.

Q. Would you tell us what the Transportation Institute is? A. Yes. It's a non-profit foundation which is dedicated primarily to research and educational activities designed to further the interests of the American flag merchant marine.

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Q. Do you have stockholders or a board of directors or board of trustees? A. We have a board of trustees, which is composed of officers of some of the major shipping companies.

Q. Could you tell us who they are? A. The chairman is Mr. Archibald E. King, who was formerly Chairman of the Board of Isthmian Lines, Inc.

The rest of the board is made up of Mr. Edward P. Walsh, president of Waterman Steamship; Mr. Michael McEvoy, who is president of Sea-Land Service, Inc.; Mr. Ran Hettena, senior vice president of Maritime Overseas Corp.; Mr. Thomas E. Stakem, senior vice president of Delta Steamship Lines, Inc.; Mr. Michael G. Mitchell, treasurer of Penn Shipping Company; Mr. Joseph Kahn, who is president of Transeastern Associates; Mr. David D. C. MacKenzie, commercial manager, Victory Carriers, Inc.; Mr. Fred S. Sherman is president of Calmar Steamship

Bertram Gottlieb—for Defendants—Direct

Company; Mr. Henry Dowd is vice president of Marine Carriers, Inc.; and Mr. Michael Klebanoff, president of Ogden Marine, Inc.

Q. What are your specific duties there, Mr. Gottlieb? What do you address yourself to?

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A. Almost anything that involves the American Merchant Marine and its interplay with other forms of transportation. For example, right now we are working on a project which involves looking at a total transportation system for the United States, seeing how the merchant marine and the inland water transportation would fit into a total transportation network.

Q. Mr. Gottlieb, how long have you been with the Transportation Institute? A. A little over three and a half years.

Q. Could you give us a resume of your qualifications and your experience prior to that time? A. Well, my education, I have a Bachelor's and a Master's degree in economics from the Illinois Institute of Technology. I have done additional graduate work at the University of Wisconsin. I have taught at the University of Wisconsin, the University of Connecticut, the University of Iowa, and Illinois Institute of Technology.

Q. What did you teach, Mr. Gottlieb? A. Oh, various economic subjects and industrial engineering subjects. My latest teaching was a year as a visiting professor at the University of Iowa, in the college of business administration,

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where I taught a course in wage and salary administration.

Q. Mr. Gottlieb, could you trace for us the history of

Bertram Gottlieb—for Defendants—Direct

the American Merchant Marine from 1951 through 1971 in terms of the number of ships sailing, the number of jobs available on those ships?

Mr. Deakins: Your Honor, I object to any further questions of this witness in this vein because it's immaterial to the issue in these proceedings. This is obviously a witness who is employed by an institute who are competitors, and they have not intervened in these proceedings, and this is testimony that's immaterial to any issue here, as we see it.

Mr. Perkel: Your Honor, the sole issue before the Court is the picketing of foreign flag vessels which has been engaged in by my clients, and my clients' admitted purpose is directed to saving their jobs and protecting their work standards. I couldn't conceive of anything more relevant to this proceeding than the truth of that position my clients have taken.

The Court: The relevancy may exist in this proceeding, Mr. Perkel, but I don't think you have qualified this witness yet as an expert in

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the field about which you have asked the question. I would have to sustain the objection.

Mr. Perkel: On that ground?

The Court: On that ground.

Q. (By Mr. Perkel) Mr. Gottlieb, with respect to the maritime field, can you give us your involvement in it, your work in it, anything you presented in the way of testimony to various congressional committees on this score, preparation of other materials which would lend to this Court some advice as to your qualifications to testify

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about the maritime industry? A. Well, as I indicated, I have been in charge of this rather large research department for over three and a half years. We have approximately eleven researchers who have anywhere from Bachelor's to Ph.D. degrees in economics and allied fields.

We conduct extensive research in all phases of the American Merchant Marine. We prepare testimony for officers of these companies when they testify before congressional committees. We prepared extensive testimony for hearings on the Merchant Marine Act of 1970.

Many of the statistics and much of the material that was used by people who testified

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for both labor and management at those hearings were material put together by my staff and myself.

I work very closely with members of the maritime administration on joint projects involving research into the merchant marine. In fact, right now my computer has statistics in it which are furnished to us directly by the maritime administration for use in this research.

I supervise the installation and operation of that computer.

Q. You don't mean physically? You mean the data in that computer? A. That's right. Physically I am not a computer technician.

Q. Within that framework, Mr. Gottlieb, and within the experience and information you have been compiling for these years, could you tell us what you have learned with respect to the number of vessels which were sailing in the American Merchant Marine for the period 1951 through 1971?

Mr. Deakins: I object to that as immaterial to these proceedings, Your Honor. It's apparent that

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this witness is about to testify in this case concerning the American Merchant Marine and the effect of foreign shipping on the

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American Merchant Marine, but the Supreme Court of the United States has said that these matters should be directed to Congress and not the courts.

The Court: Are you asking for equitable relief in this proceeding?

Mr. Deakins: Yes, sir.

The Court: The objection is overruled.

You may answer the question if you can, Mr. Gottlieb.

A. Yes, sir. In 1951 the United States privately operated flag fleet, ships of 1,000 gross tons or over, was composed of 1262 ships. There was a gradual decline over the years until at the present time we have approximately 630 ships under the American flag.

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Q. Mr. Gottlieb, you are making reference to some figures which you have on your lap? A. Yes.

Q. Could you tell us what those figures are and where they were compiled from? A. Most of the figures that I have are taken from various publications of the maritime administration, the Department of Commerce, or other governmental reporting agencies. The figures that I just gave you come from the maritime administration.

Q. So as I understand your testimony at this point, that from 1951 to date there have been a loss of approximately how many ships? A. Net loss of better than 600 ships.

Q. What does that mean in terms of jobs for the American merchant seaman? A. At the end of 1951 there were

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a total number of ship board jobs of slightly better than 93,000. This was on all American flag ships, passenger, passenger combination, cargo, tankers.

At the present time there is approximately 30,000 jobs on American ships.

Now, in terms of employment this breaks down, since for each job there has to be more than

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one person since every seafarer spends some time in shore, we can estimate that in 1951 with 93,000 plus jobs there probably were about somewhere up to about 150,000 seamen getting employment from these ships. Today we can figure maybe about 45,000.

Q. Why are there more seamen than there are jobs? A. Well, a seafaring job is not like a shoreside job where a man goes to work from 9:00 to 5:00, or whatever hours, and takes two days off. The seafarer takes a voyage. When he returns from that voyage, he may stay ashore for a while, while that ship leaves, and someone else gets aboard that ship and takes the job that he previously had on that ship. He may do that for vacation purposes, or just to stay ashore for a while for personal reasons, et cetera.

Q. Mr. Gottlieb, do you have any information for us with respect to the amount of cargo which comes into the United States which is carried aboard American bottoms, in and out of the United States? A. Yes. In 1951 we had our total ocean, United States ocean borne trade was 166,293,000 long tons. Of that amount United States flag ships carried better than 71,000,000 long tons, or

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close to 43 per cent.

Bertram Gottlieb—for Defendants—Direct

Today, I shouldn't say today, in 1971, which is the latest figures I have, the ocean borne commerce rose from the 166,000,000 to over 472,000,000. In fact, better than 472 and a half million, an increase of about two times, or the 472 is three times larger.

The amount carried on U. S. flag ships was only about 35 per cent of what it was in 1951.

In other words, it's declined to about twenty-six and a half million. It went from almost 43 per cent of the United States ocean borne trade in 1971, [sic] down to about five per cent at the present time.

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Q. So you are talking about 38 percentage points on the entire 100 per cent, that's a percentage of what was carried by American cargo? A. I am sorry. I didn't get that, Mr. Perkel.

Q. The decline that you mentioned, a 38 per cent decline. You are talking about a decline from 43 per cent of cargo to five per cent of cargo? A. Did I say a 38 per cent decline?

Q. I thought you did. A. I believe I said it was about, that the amount of cargo carried today was about one-third of what it was in 1951, even though the total U. S. commerce is about three times as much.

Q. In the course of your employment with the Transportation Institute as research director, have you had occasion to inquire into the various possible causes for this decline, both in ships and in cargo which you described to us? A. Yes, sir.

Mr. Deakins: I object to this. It calls for speculative evidence.

The Court: The objection is overruled. Don't tell us what you speculate, just tell us what you

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know. The question was, have you had occasion to inquire into this problem? Have you?

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A. Yes, sir, I have.

The Court: All right, ask your next question.

Q. Have you formed any conclusions with respect to, or have any opinions with respect to any of the various causes for the decline that you described in the American Merchant Marine? A. Yes, sir, I do.

Q. Would you tell us what your opinions are?

Mr. Deakins: That is objected to, Your Honor. It's not a question that requires the testimony of an expert. It's a question that should be answered on fact.

The Court: It may be a fact that could be a matter of opinion. The objection will be overruled. You will have an opportunity, of course, to cross examine this witness on what basis he bases his conclusion.

You may express your opinion, Mr. Gottlieb.

A. Thank you, sir.

Well, there are a variety of reasons for the decline in the carriage of cargo on U. S. flag vessels during this period.

First and foremost is the fact that it costs more to operate a U. S. flag vessel than it

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does a foreign vessel. As a result, the United States flag ship operator must charge more for his services, or make

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less of a profit for his services than the other operators, and as a result it's harder for him to get cargo to carry on those vessels.

The costs for operating an American flag ship might be two or three times the costs for operating a ship under a foreign flag. In order for a ship to be operated under the American flag, it normally has to be built in an American shipyard, costs about twice as much to build a comparable ship in an American shipyard versus a foreign yard. Therefore, the allocation of that capital cost to operating cost is greater.

The cost for crew costs can be as much as four times higher for an American vessel than for a foreign vessel. Insurance costs, cost of operating an office in the U. S. versus a foreign country. All of these costs are higher. Maintenance costs are higher in the United States, repair costs, than they are in foreign countries.

Q. What is the result of these higher costs on the ability of American ships to get cargo, if you have an opinion on that subject?

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A. Well, you have to really break it up into two types of ships, Mr. Perkel. The liners and the non-liner cargo. The United States flag fleet non-liner carries practically no foreign commerce of the United States other than that which is government generated cargo. In other words, it is unable to compete at all in the open market for commerce for cargo.

As far as the liners are concerned, most of the liners operate under what are called conference rates, which are set for all of the companies that belong to the conference and operate on that particular trade route. The conference rate is normally set at a figure that repre-

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sents the marginal figure for the U. S. operator since he is the highest cost operator in the conference.

As a result, if any unusual costs come about, if a liner, U. S. liner operator runs into any kinds of difficulties, he is likely to be operating at a loss in a conference where almost every other operator is operating at a profit.

Another problem, of course, is the shippers' freight forwarders, who generally are given the job by the people who have the goods to

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ship of shipping, of arranging for the shipping.

One of the costs involved, of course, is in the commissions paid to the shippers, and we know as a fact that foreign shipping companies have given larger commissions to these freight forwarders to get them to ship on foreign lines. The American line can't compete with these sometimes two or three times commissions because they don't have that much of a profit margin to work with.

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Q. Mr. Gottlieb, what is the average age of the American flag vessel? A. At the present time?

Q. At the present time. A. The latest figures I have, Mr. Perkel, are for 1968.

Q. Where are those figures from? A. Those are from a statistical analysis prepared by the maritime administration for the years 1956 to 1968 for the United States flag fleet and the world merchant fleet.

We show that in 1968 the United States flag fleet had an average of nineteen years, whereas the world merchant fleet had an average age of thirteen years.

Bertram Gottlieb—for Defendants—Cross

Q. Is there any trend in there with respect to the age of the American flag vessels? A. Well, from 1956 there has been a trend upward for the United States flag fleet from 11.8 average years in 1956 to 19 years in 1968, while the reverse trend exists for the world fleet, where it was 14.7 in 1956 and was 13 in 1968.

Q. Do those figures indicate anything with respect to ship construction? A. Well, the United States has lagged far behind the

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rest of the world in ship construction ever since World War II. I believe right now we have, I think, seventeen ships being constructed in this country for the merchant fleet as against over 400 in the rest of the world.

Q. In your opinion, Mr. Gottlieb, is there anything wrong with the American Merchant Marine that a little cargo wouldn't cure? A. Not a little cargo.

Mr. Deakins: I object, Your Honor.

The Court: The objection is sustained.

Mr. Perkel: I have no further questions.

The Court: You may cross examine, Mr. Deakins.

Examination by Mr. Deakins

Q. Mr. Gottlieb, your association is made up of competitors of the foreign flag ships, is it not? A. Yes, sir.

Q. Tell me this, why did you pick the year 1951 as the beginning year of your analysis on the number of jobs, for example, that were available then as compared to 1971? A. I did it quite simply for this reason, sir. Right

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after World War II we were in quite a state of flux in

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the American Merchant Marine. We ended World War II with about the only really major merchant fleet. The Ship Sales Act of 1946 enabled many foreign operators to purchase ships at a very low cents on the dollar from the United States, and it was a tremendous period of flux in there which I felt would not be a representative period to use. If we went back to, for example, the end of World War II, the comparison would have been even greater, but I didn't feel that that was an appropriate period to use.

Q. But if you had gone ahead of World War II, it would have been not so great, isn't that right? A. Prior to World War II, sir, for about ten years or so before World War II, the United States, I don't recall the number of ships we had, we had quite a few, we were carrying about, I would say in a ten-year period prior to World War II, we averaged slightly better than thirty percent of our ocean borne commerce on ships of the United States.

Q. Do you know of any U. S. liner company which does not receive a United States subsidy payment in order to engage in foreign commerce at a profit?

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A. Well, I can't answer your question the way you phrased it. I can tell you up until very recently, for example, Waterman Steamship Company did not receive any subsidy from the United States. They just were approved for subsidy in the last few months. But in terms of the last part of your statement, I don't know whether that lets them engage at a profit or not.

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Q. You are familiar in your studies, the transportation

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field, with the operating differential subsidy that is made available upon application by American flag vessels that is provided in 46 U. S. Code Section 1171; are you familiar with that? A. Yes, sir.

Q. Now, isn't it a fact that most of the American shippers take advantage of that provision? A. No, sir.

Q. How many don't? A. Oh, I couldn't give you a figure offhand, but I know the majority of the American companies do not. Up until the passage of this Act there were only fourteen companies in the United States that received operating differential subsidies.

Q. How did you ascertain this fact? Did you examine the applications? A. Every issue of the annual report of the maritime administration has a list of the names of the companies that receive both construction differential subsidy and operating differential subsidy with the gross amount in subsidy paid to each one of those companies for that year. That's where I got that from.

Q. Who publishes this?

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A. The Department of Commerce, maritime administration.

Q. Now, your conclusion as to the loss of carriage of cargo by U. S. vessels was, in one phrase, it cost more to operate American vessels, isn't that correct? A. That's part of the problem, yes, sir.

Q. What is the rest of the problem? A. Well, many of the foreign flag ships receive favored treatment from their governments. If you operate a ship under Liberian flag, for example, you don't pay the same amount of taxes, you don't have the same safety requirements, you don't have many of the restrictions that you have if you operate under the American flag. That's obviously one reason why Liberia has the largest merchant fleet in the world.

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Q. And you said also the cost of construction in the American shipyards was higher? A. Yes, sir.

Q. Crew costs were four times as high? A. I said it could be as much as that, yes, sir.

Q. And the maintenance costs, of course, are very high compared to Liberian vessels? A. I don't believe I used the word very high. I

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believe I said it was higher.

Q. It's higher? A. Yes, sir.

Q. Would it be as much as four times as high? A. Maintenance costs?

Q. Yes, sir. A. Probably not.

Q. But considerably higher? A. It would be higher.

Q. You said there were freight forwarders costs that were also entailed? A. Yes, sir.

Q. Do you know whether there is such a cost that inures to a Liberian flag vessel of your own knowledge? A. Liberian flag vessel might pay more to the freight forwarder than an American because he has enough of a profit margin that he can afford to essentially entice the American forwarder to ship on an American ship by giving him a large—

Mr. Deakins: I move to strike this answer as non-responsive and a voluntary statement, Your Honor.

The Court: I will disregard that part that was nonresponsive.

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Q. (By Mr. Deakins) And the insurance costs, I believe you said, were higher for American flag vessels? A. Yes.

Q. Now, many of these items of cost are in nowise caused by act of Liberia or Panama or any state where

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there is foreign flag registry; isn't that correct? A. I don't believe I understand your question.

Q. These are costs attendant to doing business in the United States not caused by any foreign government; isn't that correct? A. No. I indicated that there were certain things that foreign governments do——

Q. I'm talking about the costs of insurance. Let's take these instead of broad— A. Yes, sir. Some countries actually give to their ship operators favored treatment in many of these areas.

Q. Yes, sir, you said that, but the fact that it costs more in the United States isn't brought about by any act on the part of these foreign countries, is it? A. Well, if something costs more, I mean, something else costs less, and the something else that costs less can be brought about by acts of foreign

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governments, yes, sir. For example——

Q. Yes; but something that costs more is what I asked you about, not something that costs less.

Mr. Perkel: We are kind of arguing with the witness, Your Honor. If something cost more, I assume something costs less. Perhaps if we start all over again, we can find out what he is arguing about.

The Court: Do you object to the question?

Mr. Perkel: Yes, Your Honor.

The Court: The objection is sustained.

Q. (By Mr. Deakins) Now, who fixes the rates in these conference rates? A. The conference.

Q. The conference does? A. Yes.

Bertram Gottlieb—for Defendants—Cross

Q. Who makes up this conference? A. The ship owners on the particular trade route who choose to belong to the conference.

Q. Are these American flag owners or foreign flag owners or a mixture? A. A mixture.

Q. And they do this by agreement among themselves, is that right?

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A. Yes, sir. Normally the American flag owner is well out voted on these conferences, however.

Q. You stated that you know as a fact that American flag companies pay higher commissions to the freight forwarders, is that right? A. Yes, sir.

Q. Do you know that it's against the United States Shipping Act for a foreign flag company to offer higher commissions than United States companies can offer under the conference agreements? A. No, sir. I am not familiar with that law, but I can tell you that in a letter to Chairman Garmetz of the House Merchant Marine and Fisheries Committee—I am sorry. I don't have that copy with me, but I can secure a copy for the Court—the Chairman of the Freight Forwarders Association made that statement, sir.

Q. Does your association advocate that foreign flag shipping in the United States be completely interrupted and stopped? A. No, sir.

Q. Are you familiar with the fact that the Supreme Court has told the American unions that—

Mr. Perkel: Objection, Your Honor. I don't think we have to go any further.

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The Court: Let him finish his question, please.

Bertram Gottlieb—for Defendants—Cross

Q. (By Mr. Deakins)—that the interference in international relations is a matter that should be addressed to the Congress rather than to the courts or any other body that has jurisdiction of that type.

Mr. Perkel: Objection, Your Honor.

The Court: The objection is sustained.

Q. (By Mr. Deakins) Do you know whether Delta receives a U. S. subsidy or not? A. I believe it does on part of its operations, sir.

Q. Do you know whether or not Westwind African Lines is one of the companies in competition with Delta? A. What?

Q. Westwind African Lines. A. No, I don't.

Q. Do you know whether Delta Lines is a member of the American-West Africa Freight Conference? A. No, I do not know that.

Mr. Deakins: That's all.

The Court: Are there any further questions, Mr. Perkel?

Mr. Perkel: No further questions, Your Honor.

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The Court: May he be excused now?

Mr. Perkel: Unless counsel wishes to call him back. I would like to get him back to Washington, as he has expressed a desire to do.

The Court: May he be excused?

Mr. Deakins: He may be excused.

The Court: Thank you very much, Mr. Gottlieb. You are excused.

(Witness excused.)

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The Court: Call your next witness, Mr. Perkel.

George P. McCartney—for Defendants—Direct

Mr. Perkel: I would like to call Mr. George McCartney.

GEORGE P. MCCARTNEY, was called as a witness by the defendants and, having been first duly sworn, testified upon his oath as follows:

Examination by Mr. Perkel

Q. Mr. McCartney, could you tell the Court, please, what your present position is and who you work for? A. I am a representative of the Seafarers International Union of North America at headquarters, which is located in Brooklyn, New York.

My functions are as a waterfront patrolman representing the unlicensed crews aboard our contracted vessels. I also serve in the capacity of a headquarter's representative, handling various grievances and disputes, et cetera, which come up in the course of the operation of our vessels.

Q. Did you represent the Seafarers International

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Union as their representative to a meeting of the deep sea unions for want of a better term at this point, at a meeting held on October 27, 1971? A. Yes, I did.

Q. Could you tell us who was at that meeting or the unions that were represented officially at that meeting? A. All of the American seagoing unions were represented.

The International Organization of Masters, Mates and Pilots was represented by their vice president, Captain Bob Lowen, and Captain Joseph Gaier.

The American Engineers Beneficial Association was represented by Jesse Calhoon, president of District 1, and Ray McKay, president of District 2 of the MEBA.

George P. McCartney—for Defendants—Direct

The American Radio Association was represented by Harvey Strickhartz.

The Radio Officers Union was represented by Edward Fitzgerald.

The Staff Officers Association was represented by Paul Tonnarelli.

The unlicensed unions present, the National Maritime Union was represented by Mel Barisic, vice president.

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The SIU was represented by Joseph DiGiorgio, a vice president of the SIU, and myself.

Q. Were there also counsel present? A. Yes. Counsel from the various seagoing unions were present: From the NMU, from the SIU, from the Masters, Mates and Pilots, from the Marine Engineers, from the ARA and the SIU also.

Q. Now, Mr. McCartney, could you tell us, to the best of your knowledge, who called the meeting and what happened at that meeting?

Mr. Deakins: Now, Your Honor, I object to this as a compound question, because I intend to object to the second question.

The Court: The objection is sustained. Ask him one at a time, Mr. Perkel, please.

Q. (By Mr. Perkel) Mr. McCartney, could you tell us who called the meeting? A. Jesse Calhoun called the meeting.

Q. Were you in attendance through the entire meeting? A. Yes, I was.

Q. Would you please tell us what happened at that meeting?

George P. McCartney—for Defendants—Direct

(141) Mr. Deakins: I object to the question, Your Honor, because it calls for a hearsay answer and it's self-serving and is not material to these issues.

The Court: I will have to take that objection under advisement until I hear the answer so that I may know whether what happened is relevant to this lawsuit. I don't know whether they voted to picket there or not. If they did, it's probably relevant.

Mr. Deakins: Your Honor, there is no showing that this was made in the presence of any of the people in this case who are on the plaintiffs' side, and for that reason I object to it as hearsay and self-serving.

The Court: Aren't you suing every one of the unions that was represented at this meeting?

Mr. Deakins: Yes, sir, I think so.

The Court: Aren't you alleging that they are damaging your clients by some action they are taking?

Mr. Deakins: That's right, Your Honor.

The Court: Wouldn't you be interested in knowing what the origination of that action was, if this was the origination?

Mr. Deakins: We have been furnished with minutes of this meeting.

(142) The Court: I will take the objection along. If it appears to be irrelevant, I will disregard it, but I can't tell until I hear what he says.
Mr. Deakins: Thank you, Your Honor.

George P. McCartney—for Defendants—Direct

The Witness: May I answer the question, Your Honor?

The Court: Yes, you may answer the question.

A. The reason for the meeting was to attempt to take some measures to correct a desperate situation.

The American Merchant Marine jobwise is in desperate, crucial trouble at the present time, and the purpose of the meeting was to discuss what lawful steps could be taken to protect the jobs of American seamen.

What was discussed at the meeting was what could be done to correct these problems. We discussed what we thought had caused the loss in jobs, which has been a terrible loss in recent years. We have lost approximately fifty percent of our jobs in the last couple of years. We are down to carrying about five percent of our foreign commerce.

It was pointed out and opinions were expressed by various of the representatives present

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of these seagoing unions that this could be traced to the competition of foreign flag vessels, the substandard wages and conditions of these vessels, in direct competition with the American Merchant Marine; and it was felt and it was concluded that the best possible course of action for us to follow was publicity picketing to call this to the attention of the American public, to request their support and cooperation, to ask them to patronize American ships and, in conjunction with this, to assist the American seaman.

This was pretty much what was discussed at the meeting.

The Court: Do you still want to object to the question, Mr. Deakins?

George P. McCartney—for Defendants—Direct

Mr. Deakins: I couldn't hear you, Your Honor.

The Court: Do you still want to object to the question?

Mr. Deakins: I object to this. He gave a conclusion that it was substandard wages, and he is speaking about a matter that has been the subject of some minutes. If he wants to offer the minutes, then I have no objection.

The Court: Well, my understanding was

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the question was, What happened at that meeting?

Mr. Deakins: That's right.

The Court: I am not taking any statement he makes for the truth of the matters stated; just that it was made.

The objection will be overruled and the testimony will be admitted for such weight as the Court will give it.

Mr. Perkel: Would you mark this for identification, please?

(An instrument was marked for identification as Defendants' Exhibit 8.)

Q. (By Mr. Perkel) Mr. McCartney, I show you Defendants' Exhibit 8 for identification and ask you to peruse it for a moment.

(Short delay.)

Q. Mr. McCartney, do you know what those papers are that I just handed you? A. Yes. These are the minutes of the meeting held on October 27th at the office of the MEBA in New York City, and in perusing it, it is a true

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and authentic and accurate description of what was said and what transpired at the meeting.

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Q. Now, Mr. McCartney, here are three attachments to the document which you described as minutes.

Are you familiar with those as well? A. Yes, I am.

Q. Could you merely identify for us what the first one is? A. The first one is the picket sign which was used—

Q. What is the second one? A. The leaflet to the public which was distributed—

Q. And the third one? A. The third one is the instructions to the seagoing unions participating in this publicity picketing.

Mr. Perkel: Your Honor, I would now offer this exhibit in evidence as Defendants' Exhibit 8.

Mr. Deakins: Your Honor, I object to Defendants' Exhibit 8 because it's hearsay, self-serving and has no materiality to these proceedings.

The Court: For what purpose is it offered, Mr. Perkel?

Mr. Perkel: Your Honor, some point has been raised in here by Counsel for the other side and, if I recall their brief, it dwelt somewhat on it, and the relevance escaped me in their brief, but they raised it, with respect to our motives.

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I think they are well aware that unless our motives are somewhat brought under the province of the Ingres, McCullough and Benz decisions, unless they can show a motive to organize, then they will have a problem with those opinions.

Now Your Honor, since they have raised the

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question of our motive, alleging that it is to go in and do something and interfere with the internal operation of their vessels, as a matter of defense it is clearly relevant to this proceeding that our motive is, as has always been stated, that we want to get Americans to literally boycott that ship, do not patronize, which motive we admit to be ours.

Now, that is an issue in here which has been raised apparently by counsel, and I don't understand it since I said this. I thought they had stipulated it away until I read their brief again.

The Court: Do you want to be heard on this, Mr. Deakins, as to motive?

Mr. Deakins: Your Honor, the motive is determined from all the facts, but not by self-serving statements that are made and hearsay statements that are written and made out of the

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presence of the plaintiffs here. I don't see how this could be material, because even though they are certified by someone who was there, that doesn't necessarily mean that they are admissible against us, because they are clearly hearsay.

Motive, I think, is a matter that has to be determined by the Court from all the evidence and not from hearsay evidence. Picket signs, for one thing.

The Court: I take it, then, from your statement, Mr. Perkel, that this exhibit is not offered for the truth of any matters stated therein, but simply as a record of what was done at the meeting on October 27th?

Mr. Perkel: That is correct, Your Honor.

The Court: Do you have objection to it being admitted for that purpose?

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Mr. Deakins: Yes, sir. I think it's hearsay.

The Court: Well, it's obviously hearsay. There isn't any question about it.

It's not offered for the truth of the matters stated therein, but only offered to show that this came out of that meeting.

Mr. Deakins: Well, it has no value if

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it is hearsay and not offered for the truth of what it was, what it purports to be. It can't have any probative value.

The Court: I will admit it for the purpose of showing that this was the product of a meeting of a group of people in New York on October 27th, without being proof of the truth of any matters stated therein.

Q. (By Mr. Perkel) Mr. McCartney, as a result of that meeting did you then communicate—when I say you, I mean you personally—with any other outposts of the SIU, advising them of the prospective activity, and, if so, would you tell us whom you communicated with and what you told them? Not what they told you; just what you told them. A. Yes. I communicated with our representatives in the Port of New Orleans and the Port of Mobile. I went to both of these ports, bringing a supply of picket signs, the leaflets to be distributed to the public and the instructions to the participating unions.

Q. Now, do you know of your own knowledge whether anyone else went out to other ports? A. Yes, I do.

Q. Now, could you tell us again of your knowledge

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whether the instructions that they went out with were

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precisely the same instructions that you went out with?

A. They were exactly the same, and the two representatives—

Q. Now, could you tell me what your instructions were?

A. My instructions were to bring the materials, the picket signs and the leaflets and the detailed instructions, to the participating unions, to the Port of New Orleans, where a meeting was called of all the American seagoing unions, which meeting took place.

I explained in detail to the representatives again of all the American seagoing unions in the Port of New Orleans and also in the Port of Mobile, Alabama, giving them a supply of picket signs, leaflets and the detailed instructions.

In addition to my going to New Orleans and Mobile, Joseph DiGiorgio of the SIU and Leon Shapiro of District 1 of the MEBA went to the Port of Houston, where they also held a similar type meeting with the representatives of the various American, of the various seagoing, American seagoing, unions in this port here. I believe from Houston they proceeded to the West Coast, where

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they held similar meetings in the Ports of Seattle, the Los Angeles area, comprising San Pedro and Long Beach and Wilmington, and San Francisco.

Mr. Perkel: I have no further questions.

The Court: You may cross examine.

Examination by Mr. Deakins

Q. Mr. McCartney, in Defendants' Exhibit 8 there is a reference made to substandard wages.

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Does that mean wages that are substandard in Liberia or in the United States? A. I'm not sure that I quite understand your question, sir. Are you saying American seamen as compared to the seamen employed aboard a Liberian vessel?

Q. Yes. A. Well, I don't think there is any question that the wages, working conditions, the safety conditions existing aboard the Panamanian, Honduran vessels are substandard to those negotiated by the various American seagoing unions.

Q. Well, you are talking, then, about their being substandard in comparison with American wages, for example?

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A. Yes, sir.

Q. Now, does your— A. Well, so I can be as clear as I possibly can, they are less in every sense.

Q. Yes. That's what I asked you. A. Actually speaking.

Q. You have answered that. A. The base wages of an AB on board a Liberian flag vessel as compared to an able-bodied seaman aboard an American flag vessel, it was testified to before that it's approximately four times less. I think this would be an accurate description.

Q. Do you know exactly what the wage of a seaman on a Liberian vessel is, an ordinary seaman? A. No, I couldn't say exactly. I could give you—

Q. That's all right, then. Thank you.

Now, does your committee mean to keep the foreign flag fleet completely away from American shores forever? A. No, definitely not.

Q. Well, what do they want? What do they want the foreign flag people to do? To pay the same wages as

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American vessels and maintain the same working conditions as the people in the American fleet do? A. Not necessarily.

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Q. What do they want? A. What we want is to obtain more cargo for American flag vessels. To give you an example——

Q. Well, I don't need another speech. You said you wanted to get more cargo for American vessels.

Now, how do you propose to get more cargo? By causing the foreign flag operating costs to be increased? A. Again, I have to say not necessarily. We hope to accomplish this——

Q. Well, how do you propose to do it, then? A. We hope to accomplish this by enlisting the support, the patronage of the American public. That is the purpose of our picket lines, our publicity picketing, to gain their support, their patronage of American ships. We have a committee in Washington which is definitely designed to promote American cargo.

Q. All right. Now, you have worked around the waterfront for a long time, haven't you? A. Well, I sailed for 12 years——

Q. Right. A. —in the engine department as a fireman and water tender, oiler, electrician; and I have been an elected official of the union for the last 10 years.

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I have been going to sea and I have been a representative of American seamen all of my life.

Q. And you know as a fact that longshoremen and other maritime unions won't cross picket lines? A. No, I don't know that to be a fact.

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Q. You don't know that to be a fact? A. We had hoped for their cooperation, but as to whether it would be a definite fact, no, I can't say that that would be true. We certainly had hoped that they would respect and support our picket lines.

Q. Does your union cross picket lines? A. We try not to.

Q. Well, do they? Have you ever crossed a picket line? A. Personally I have never crossed the picket line, no.

Q. Have you ever seen any member of the SIU cross a picket line? A. You are getting into an involved area where there are sometimes questions raised of representation——

Q. I said any picket line. Just tell me yes or no. A. I would have to research the record to find an example.

The Court: Now, you don't need to look
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at any records to know what your eyes have seen. You tell me whether you have ever seen a seaman, SIU member, cross a picket line. Have you ever seen that or not?

A. I personally have never seen it, Your Honor. I know that it has happened, but I personally have never seen it.

The Court: He asked you if you had seen it. That's the only question.

Go ahead, Mr. Deakins.

Q. (By Mr. Deakins) Mr. McCartney, have you ever served on a vessel that was struck? A. No, I can't say that I have.

Mr. Perkel: Your Honor, I will just ask the question just to make the question clear. Does he mean

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did Mr. McCartney ever scab or was he serving on a vessel which was struck and he was on strike?

Mr. Deakins: No. I was going to ask him the next question.

The Court: Let's clear that up first.

A. May I answer your question, sir?

Q. (By Mr. Deakins) You don't ask questions. I will ask them.

The Court: Don't answer it yet.

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I will sustain the objection.

Now, ask the next question.

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Q. Mr. McCartney—McCartney, is that it? A. McCartney, right.

Q. Have you ever been a member of a crew on a vessel that was struck? A. Yes, I have in the past due to a longshoreman's strike in the Port of New York.

Q. Do you ever recall the SIU having been on strike? A. We haven't been on strike in the last twenty years, to my knowledge, as far as a general strike is concerned.

Q. Have you been a member of a crew on a vessel that has ever been struck during your seagoing life? A. Yes, by the longshoremen, by the International Longshoremen's Association.

Q. Did your crew members come ashore at that time? A. We didn't sail the vessel but we remained on board the vessel.

Q. All right, you answered my next question. You didn't sail while the vessel was being struck, did you? A. Our employment was maintained by the company.

Mr. Deakins: Move to strike the answer as not responsive, Your Honor.

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The Court: The objection is sustained. He wants to know whether you sailed the ship.

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A. No, we did not sail the ship.

Q. Now, would your union—you being what, a patrolman? A. Yes, sir.

Q. —sail any vessel that was struck? A. It would be against our policy.

Q. Have you ever seen a longshoreman cross a picket line at a vessel that was struck? A. Not to my knowledge.

Q. How about any of the others, the American Radio Officers Association, or MEBA, or any of these other seagoing unions, have you ever seen them work a vessel that was picketed? A. It again depends on who is picketing it. If there is a question of representation of the crews aboard the vessel, where they were in competition with one another, I think in this instance they would cross the picket lines of the other unions. And this has happened in the past.

Q. Have you ever seen a situation where the SIU, or any of the associations involved in picketing which are picketing a vessel where the longshoremen would work the vessel? A. Not to my knowledge.

Q. Let me read you something and ask you if you agree
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with this, and I want you to listen very carefully and just answer me yes or no. I want to read this quotation to you.

“If foreign flag operators would realize that they should pay American seamen standard wages and cause their ships to have American seamen’s standard working conditions, then the defendants”—that’s the people here—

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"would have accomplished their educational goal by communication and would cease their activities."

Do you agree with that or not? A. Do I have to answer yes or no, Your Honor?

The Court: You may answer yes or no and if you think an explanation is needed I will listen to it.

A. I would have to answer yes to that.

Q. You answer yes to that? A. Right.

The Court: Now, you can explain it if you need to.

A. I think a great deal more is entailed than just what you have read. There is a great deal more to this than just what you have read in this statement there. As far as the decided differences in the wages, the rates of overtime, the various

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benefits, the pension, welfare and pension benefits, which are all part of the cost of operating a ship under the American flag, I think all of this has to be taken into consideration in answering the question that there is a great deal more at stake than just what you read there.

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Q. Well, now, you answered a question previously before about the intention of your committee with reference to whether or not to keep foreign flag vessels from the American shores and said no that wasn't your intention. I want to ask you what your committee would propose to do to keep, to permit foreign flag vessels to come to the American shores and work?

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Mr. Perkel: Objection, Your Honor. That's a future conclusion. I thought we were dealing here with a conduct which is going on now. This is at best speculative.

The Court: There has been some allegation of threat of future action in this case. If this is relevant to that, I need to hear it. The objection is overruled.

What do you propose to do?

A. We had hoped to gain the support of the American public and to encourage them to solicit their patronage of American ships. We have had various committees, slogans, SOS, save our ships, to encourage them to ship aboard American vessels, to patronize American steamship companies.

And in this fashion, in this manner we had hoped to increase our participation by gaining

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more cargo for American ships because without cargo even the most modern efficient vessels built, the new LASH vessels, the new CB vessels, cargo aboard ship vessels, barge aboard ship, unless you are able to participate and gain some of the cargo, without cargo no steamship company can remain in business.

The Court: Now tell us what you propose to do. That was the question. You have already told us that you have done this. Now, do you propose to do anything else is what Mr. Deakins asked you.

A. Just to continue our same actions, our same methods by trying to encourage, to increase the knowledge of the

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average American citizen as to what is really at stake here. Not only as far as the American seaman but also the drain of dollars, the role of the merchant marine as a future arm of defense in event of war, which the record speaks for itself along those lines.

The Court: Mr. McCartney, we are going to be here all week if you continue repeating what you have already told me. Most of what you have said in the last three minutes you told me ten minutes ago.

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Now, Mr. Deakins simply asked you what do you propose to do different than what you have already done. And you have answered that saying "Nothing, we intend to continue."

A. That's correct, sir.

The Court: Is that the answer to the question?

A. That is the answer, sir.

The Court: Please limit your answers to the questions counsel asks you, because if I have to listen to this speech every time somebody asks you a question we are going to be here all week, and I don't think your employers would like for you to spend that much money.

Go ahead, please. Ask your next question.

Q. Mr. McCartney, you said that you were appealing to the American public. Is that right? A. Yes, sir.

Q. The only appealing you did was down at the docks with a picket sign, wasn't it? A. No, in addition to that we distributed leaflets.

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Q. Where, at the dockside? A. At various steamship companies in New York, to the general public.

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Q. You don't know about the situation in Houston, do you? A. No, I don't, sir.

Q. You say that you intend to do this by appealing to the American public even though you know that no maritime union, or the ILA has ever crossed a picket line, to your recollection, unless there was some little dispute among the unions, is that right? A. Yes, we intend to continue this distribution of leaflets.

Mr. Deakins: Move to strike the answer as not responsive.

The Court: Well, you did ask him two questions in one. If you will separate them, I can rule on your objection.

Q. Mr. McCartney, you say in answer to other questions that you don't recollect any union, maritime union, or the ILA ever crossing a picket line; isn't that right?

Mr. Perkel: Objection, that is not right, Your Honor. The witness has previously testified that representation issues—

The Court: Let him say whether it's right or not.

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A. With the exception. There have been instances where they have crossed picket lines as a result of competition for representation aboard the vessels.

Q. Then let me modify my question to say, in a situation like this, where the unions were picketing a vessel, or the ILA was picketing a vessel under such circumstances as there are here, or for the purpose of organiza-

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tion, you don't know of a time when a union crossed a picket line, one of the maritime unions or the ILA, do you?

A. Personally, no, but I have read about them crossing.

Mr. Deakins: I move to strike the last of that answer.

The Court: I will disregard what he has read about it. Personally he doesn't. Now, go ahead and ask your next question.

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Q. Then your picketing at Mobile and New Orleans was at the dockside, wasn't it? A. Yes, sir.

Q. And you passed our leaflets down there to them, laid them around on the ground and whatever was available close there, isn't that right? A. Yes.

Q. And I assume, I think the testimony here is that that was what was done in Houston? A. Yes.

Q. Now, the American public are uptown and about the cities. Did you in your picketing at Mobile or at New Orleans go out into the public areas and carry picket signs or pass out these leaflets? A. I did not participate in the picketing in either New Orleans or Mobile.

Q. Then you don't know anything about it, is that right? A. I participated in the meetings, the discussions to prepare for the demonstrations to call this to the attention of the American public.

Q. You went down there just to hand them these documents and then left, is that right? A. And to give them instructions and to answer any question that they might have.

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Q. In the discussions you had in New York, was there

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any plan to go out in the cities and pass out leaflets or carry picket signs? A. Yes, there were.

Q. Where does that appear in the minutes that have been offered here? A. The second meeting held on November 2nd this appears.

Q. It appears where? A. In the minutes of that, where it had been discussed and was concluded that this would be a suitable course of action for us to follow.

Q. You weren't asked any questions in connection with Defendants' Exhibit 8 on any meeting of November 2nd, were you? A. No, only on October 22.

Q. You have a copy of those November 2nd minutes with you, do you? A. Do we have a copy of the minutes of November 2nd?

Mr. Perkel: By all means. You left an envelope here, or did you take it?

A. Yes, it's over at the chair there.

May I read from this?

Q. No, I want to look at them. I am not going to get those put in evidence.

Well, Mr. McCartney, I have looked at a

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letter of November 5th, 1971, on the firm stationery of Schulman, Abarbanel, Perkel & McEvoy, signed by Mr. Schulman, which apparently had attached to it a resume of some meetings of the American Seamen ad hoc committee and a meeting held at 10:30 a.m. on November 2nd, 1971, at 17 Battery Place, New York, New York, where Mr. Calhoun presided. A. That's correct.

Q. Is that the meeting you talk about? A. Yes, sir.

Q. Was this the material you had in mind when you gave me that last answer, where you say where it was

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said in these minutes that, "Discussion was had and unanimously resolved to prepare leaflets for distribution at home offices of certain shippers and shipping companies." Is that what you had in mind? A. Yes, sir.

Mr. Deakins: I move to strike his answer as not responsive.

The Court: Which answer?

Mr. Deakins: The answer he gave me a while ago where he said they intend to go out in the public and advertise this.

Mr. Perkel: I don't understand at all,

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Your Honor.

Mr. Deakins: His minutes refute his answer, Your Honor.

The Court: What was his last answer?

The Witness: I am rather confused, Your Honor.

The Court: What was the last answer, Mr. Reporter?

Mr. Deakins: He said what I read to him was the fact. The answer before that was that they intended to go out in the public and advertise these.

The Witness: I said we did.

The Court: This says that they are going to print leaflets?

Mr. Deakins: Go to specific shipping offices, something like that. I read it in the record; home offices.

The Court: Is it your contention that specific shipping offices are not members of the public?

Mr. Deakins: I thought he said the general public. At least that was what my question was intended to be.

The Court: That is exactly what he

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said earlier.

Mr. Deakins: Up on Main Street and out in the city. That is what he said, yes, but that isn't what the minutes said.

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Mr. Perkel: Let us enter the minutes and consider this the best evidence and that would solve, I imagine, everybody's problem. I offer these as Defendants' 9.

The Court: Are you contending that the steamship companies are not part of the general public?

Mr. Deakins: They are part of the general public, Your Honor, but this witness, I asked him a question, if the Court will remember, about going out to the public and up on Main Street, and he said this doesn't say that.

The Court: This argument has obscured my memory of your reading of the minutes. Did you read the word "exclusively" in here?

Mr. Deakins: I can't quote it exactly, Your Honor.

The Court: Let's read it again. If it says "exclusively," your objection is good.

Mr. Deakins: Yes, sir.

The Court: If they are a part of the general public, then I will overrule your objection.

Mr. Perkel: Your Honor, it reads:

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"B. Raskin reported on publicity matters and preparation of new leaflet after consultation with counsel, as attached. Report, after discussion, unanimously accepted.

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“Discussion was had and unanimously resolved to prepare leaflets for distribution at home offices of certain shippers and shipping companies. Such material to be prepared by B. Raskin and approved by counsel as to legal issues. In addition publicity of the issues in the dispute should be taken by B. Raskin via all media.”

Mr. Deakins: He said certain shipping companies, and that's not the general public.

The Court: I will take note of both answers.

Mr. Deakins: Thank you, Your Honor.

The Witness: May I say something, Your Honor?

The Court: No, you are on the witness stand. You reply only to questions. If we get everybody making speeches here, we will never get through.

Just ask your question, please. Your counsel will ask you such questions as he thinks you should answer.

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Q. (By Mr. Deakins) Incidentally, those minutes I read you were prepared by Mr. Perkel, weren't they? A. The last!

Q. Were the last ones? A. I believe they were prepared by Mr. Schulman.

Mr. Deakins: By Mr. Schulman. That's all.

The Court: Mr. Perkel, do you have further questions?

Mr. Perkel: First, Your Honor, I would like to offer this as Defendants' 9 just so we keep the record straight.

The Witness: This is part of it.

Mr. Perkel: Do you want to take a look at it in its full blown glory?

George P. McCartney—for Defendants—Redirect

Mr. Deakins: I have seen it.

I object to this, Your Honor, because it's self-serving, hearsay, and I think it directly contradicts what the witness has testified to.

Mr. Perkel: Your Honor, I offer it on the same grounds as the prior minutes, that it's not offered as to the truth of the contents in them, merely the actions were taken.

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The Court: Admitted for the limited purpose. I assume, Mr. Deakins, that you do want the part that you read into the record?

Mr. Deakins: Yes, Your Honor. I read that to him, and I think I identified it as such.

The Court: It is admitted for the limited purpose expressed.

Do you have any further questions, Mr. Perkel, of this witness?

Mr. Perkel: Yes, Your Honor.

The Court: Go ahead, please.

(Defendants' Exhibit No. 9 was marked.)

Examination by Mr. Perkel

Q. Mr. McCartney, are you aware of the Robin Line beef? A. Yes, I am.

Q. And of the Floridian beef? A. Yes, I am.

Q. In both of those situation, did not SIU members cross picket lines? A. This is what I had in mind in discussing representation aboard a vessel. This is one instance where the ILA crossed the picket lines, rather the SIU

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crossed the picket line of the ILA and the Masters, Mates

Paul Drozak—for Defendants—Direct

and Pilots over the collective bargaining representative, representation rights for the crew on board this vessel, the Floridian and also during the Robin Line beef, which goes back to 1957.

Q. One other thing, Mr. McCartney. Are you familiar with the picketing being conducted by the committees and defendant here up in Diluth [sic] and Superior, Wisconsin; Diluth, [sic] Minnesota, and Superior, Wisconsin?

Mr. Deakins: I object to this as not within the scope of this case and it's not proper rebuttal.

Mr. Perkel: Let me show you where it is going. If Mr. McCartney is familiar, he will be able to testify, if he knows it, that the ILA in Superior, Wisconsin, is respecting the line, and the ILA in Diluth, [sic] Minnesota, is going through the line like water, if he knows it.

The Court: If we are going to try every one of these pickets throughout the United States, we will never get through with this litigation. I am going to have to ask you gentlemen to limit it to what is happening here in Houston,

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Harris County.

. . .

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PAUL DROZAK, was called as a witness by the defendants and, having been first duly sworn, testified upon his oath as follows:

The Witness: Paul Drozak, 5846 Schevers, S-c-h-e-v-e-r-s, Houston, Texas.

The Court: All right, Mr. Drozak. Have a seat on the witness stand.

Paul Drozak—for Defendants—Direct

You have been sworn, haven't you?

A. Yes, sir.

The Court: Go ahead, Mr. Perkel.

Examination by Mr. Perkel

Q. Mr. Drozak, could you tell us who you are employed by, please? A. Seafarers International Union.

Q. In what capacity, Mr. Drozak? A. As business agent.

Q. Mr. Drozak, you have been sitting in this court and hearing certain testimony with respect to a committee to save the American flag or ad hoc committee.

Are you familiar with that committee?

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A. Yes.

Q. Did you in fact receive instructions from that committee? A. Yes.

Q. Did you receive instructions from that committee in writing? A. Yes.

Q. Did you act pursuant to those instructions? A. Yes.

Q. Could you tell us what you did in the Port of Houston concerning the written instructions you received from that committee? A. Our instructions were to picket foreign flag ships under Panamanian and Liberian and Honduran flags. We set up pickets on—

Q. Mr. Drozak, when you say "we," who do you mean? A. The committee.

Q. Is that the same committee I am talking about or a committee in the Port of Houston? A. The committee in the Port of Houston, which is a branch of the head-quarter's [sic] committee of the international union.

Paul Drozak—for Defendants—Direct

Q. Who are the members or participants of that committee in the Port of Houston? A. Mills of the National Maritime Union, Dolley of

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the MEBA District 2, Palombo of the Masters, Mates and Pilots, and myself of the Seafarers International Union.

Q. Did you function in any way as ad hoc chairman of that subcommittee? A. No. Dolley has functioned as chairman of the committee. Dolley, D-o-l-l-e-y, of MEBA District 1.

Q. Could you tell us what actions that committee took and what you did next with them? A. We followed the instructions after a meeting with Mr. DiGiorgio and Shapiro, who had come down from New York to give us the instructions as to the problems of the American Merchant Marine, what was consisting of cargoes not being shipped on American flags, and what we called the runaway monkey flags was taking the cargoes. Our ships was idle. Our seamen are idle, and we have no jobs, and we had to do something to bring it to the attention of the public and the shippers that the American Merchant Marine is in desperate need of cargo and that they were shipping the cargo on these monkey flags, as we call them, at substandard wages where our people were out of work.

Q. Mr. Drozak, did you engage in any picketing of any kind?

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A. Yes. On October the 28th, we had, I think it was, three Panamanian and Liberian ships in the Port of Houston, and we immediately went back to our union halls and we

Paul Drozak—for Defendants—Direct

asked for volunteers to set up picket lines on Panamanian and Liberian ships in the Port of Houston.

Q. Did you get those volunteers? A. We got the volunteers with no problem.

Q. Did you give them any instructions? A. We instructed them that they were going to walk the picket line with a picket sign. If anyone asked them any question, to refer them to the picket sign, give them a leaflet, which we had available for distributing, and that was it.

Q. Mr. Drozak, I call your attention to the first annexed sheet of Defendants' Exhibit 8 in evidence and the second annexed sheet, which is after the minutes, and ask you to examine them, please, the first being entitled "Picket sign" and the second one being entitled "leaflet."

(Short delay.)

Q. Mr. Drozak, are those the picket signs which you gave out and the leaflets you gave out? A. Yes, sir.

Q. Exclusively, or wasn't there also one other piece
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of literature? A. There was another additional leaflet that went out also.

Mr. Perkel: Would you mark this for identification?

(An instrument was marked for identification as Defendants' Exhibit 10.)

Q. Mr. Drozak, I ask you to look at Defendants' 10 for identification.

Is that the other literature you were handing out? A. That's the second leaflet.

Paul Drozak—for Defendants—Direct

Mr. Perkel: Your Honor, I offer this in evidence at this point.

The Court: Is there any objection to Defendants' 10?

Mr. Deakins: No objection.

The Court: It will be admitted without objection.

(Defendants' Exhibit 10 was received in evidence.)

Q. (By Mr. Perkel) Mr. Drozak, you testified that seamen were idle.

Do you have any records which would indicate what the number of jobs available for

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seamen in the SIU is today? A. Yes.

Q. And do you have records which would indicate what jobs were available in a comparable period, let us say, a year ago? A. Yes.

Q. Did you in fact examine those records before you came over here? A. We examined them for the last three or four years.

Q. Could you give us for a comparable period how many jobs are posted now on the board available for American seamen in the SIU? A. I can say compared to two years ago, in the Port of Houston, which is one of our largest shipping ports in the United States, our shipping figures have dropped sixty percent.

Q. You mean there are sixty percent less jobs available today? A. That's correct.

Q. How about ships? Do we have as many contracting ships? A. No.

Q. You mentioned in your testimony that there were ships idle. A. That's correct.

Paul Drozak—for Defendants—Direct

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Q. Do you know whether any ships are idle and could you tell us what their names are? A. Yes. We have since the first of this last year idle because of no cargo available the following ships in the Port of Houston:

The Keva Ideal, Keva Corporation; the Overseas Audrey, Maritime Overseas; the American Victory, Victory Carriers; the Texas Erie, Hudson Waterways; the Transhuron, Hudson Waterways; and the Cakins, Texas City Refinery.

These six ships represent to our union alone in the Port of Houston 180 jobs.

Q. Do you know whether the SIU has made any attempts to meet foreign competition by reducing various scales, wages or anything of that nature? A. Yes.

Q. Could you tell us about that, please? A. Yes. On Isthmian Steamship Company two years ago we reduced our manning scale by three persons in the unlicensed crew in order for them to try to compete with the foreign operators in the Indian and around the world trade, which Isthmian has had for some fifty or sixty years. These ships that were reduced were twenty-eight in that particular fleet at that time.

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Q. Any others? A. Yes. Columbia Marine Steamship Company, which operates thirteen C-2's, did operate thirteen C-2's, we reduced the manning scale on those ships by four men in the unlicensed crew.

Q. Do you have any idea how many jobs this cost the SIU? A. Well, the total crew was thirty-one, and we reduced it to twenty-seven; so that's thirteen times—over a hundred jobs.

Q. Now, with respect to the picketing, Mr. Drozak, did

Paul Drozak—for Defendants—Cross

you in fact see any occasions where pickets were out picketing? A. Yes.

Q. Could you describe for us what you saw and where you saw it and when you saw it? A. Well, I saw it on practically every place that we have established a picket line and maintained it, every ship.

Q. Could you tell us where that was, to the best of your recollection? A. Well, one was at the bulk plant, one was at the grain elevator, several at the City Docks at public facilities here in the Port of Houston.

Sometime during the late hours of the

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night I would drive down to the picket line just to make sure that everything is okay, shoot the breeze with the pickets a little bit. We would have two pickets walking and two pickets sitting to relieve on each watch, at each place.

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Q. Did you ever see any of the pickets violating any of the instructions which you gave? A. No, sir.

Mr. Perkel: I have no further questions, Your Honor.

The Court: You may cross examine, Mr. Deakins.

Examination by Mr. Deakins

Q. Mr. Drozak, you said you reduced the crew of vessels of some company—I couldn't understand the name of it—by three men? A. Isthman Steamship.

Q. Isthman? A. Isthman. States Marine, Isthman. It's called Isthman, but it's States Marine, controlled by States Marine.

Paul Drozak—for Defendants—Cross

Q. You reduced them three men? A. Yes, sir.

Q. And the vessel could sail and did sail, is that right?

A. Yes, sir.

Q. And they have been sailing? A. Not since then.

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Q. They are idle now, are they? A. They have been sold to a foreign company, sir, transferred.

Q. How long did they sail with a crew minus three men?

A. Up until about eight months ago.

Q. From what time? A. Two years ago.

Q. What were the complement of those crews? A. The crews on those ships was 34 men.

Mr. Perkel: Your Honor, I would like to make clear for the record that I believe when Mr. Drozak says the crew he is talking about the unlicensed crew. Is that correct?

The Witness: Unlicensed personnel, yes.

Q. That's what I meant, Mr. Drozak.

Mr. Drozak, when you got instructions from New York about this picketing and were given the leaflets, you were told what to do and what this was all about, weren't you?

A. I knew what it was all about for some several years.

Q. But did these people tell you anything else about what it was all about? A. Yes.

Q. What did they tell you the dispute was?

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A. The dispute is simple. The foreign flags are taking all of the cargo. The American operator cannot get any cargo. Therefore, our people are out of jobs.

Q. So your dispute, then, was with the foreign flag vessels, right, for getting your jobs? A. Our dispute is

Paul Drozak—for Defendants—Cross

with the American shippers. We want the American cargo shipped on American ships, under American flag, to where we can maintain our quota of jobs for our people.

Q. Mr. Drozak, you wouldn't dispute the leaflet that was given to you out of New York as shown by Defendants' Exhibit 8, would you, wherein it says, and you are supposed to fill in the name of the vessels, "Our dispute is limited to the vessel picketed at this site, the SS Westwind"? A. That's right.

Q. So then there is a dispute with a vessel, according to this leaflet, isn't that right? A. With the vessel and with the shippers, that's correct.

Q. Right.

Now, if these shippers, these foreign flag vessels—I don't want to confuse you—the foreign flag vessel owners, because they pay

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crews less money than American seamen and because they maintain more less favorable working conditions, you contend that you can't be competitive; is that right? A. The American ship operator can't be competitive.

Q. That's right. A. That's right.

Q. But your people get their jobs from him, from the American ship operator, so you have an interest in this thing? A. Naturally we have an interest.

Q. And your interest is to get all of the business and keep the foreign flag vessels away from these shores, isn't that right? A. No. No, sir.

Q. It is not? A. No, sir.

Q. Then your interest is to get the foreign flag owners to increase the wages and working conditions of their people so that you will be competitive with them; isn't that right? A. So that our American operator can com-

Paul Drozak—for Defendants—Cross

pete with them on the cargoes where our people can have jobs, that is right.

Q. But that would mean that they will have to increase
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their costs so you will be competitive, your ship owners will be competitive with these foreign flag vessels, thereby your men will have the work that they used to get? A. Not necessarily.

Q. Well, then what is your answer? A. If the foreign operator who operates these ships under the Pan el banco, Panamanian, Liberian flag would pay wages and conditions equivalent to the American operator, then the American operator can compete for the cargoes and get some of the cargoes which they do not get now.

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Q. And that's what you intend to accomplish by this picketing, isn't that right? A. We are trying to.

Mr. Deakins: That's all. Thank you, Mr. Drozak.

The Court: Any further questions, Mr. Perkel?

Examination by Mr. Perkel

Q. Mr. Drozak, are you a member of the committee sitting in New York City? A. No, sir.

Q. You receive your instructions from that committee? A. That's right.

Q. Has the committee instructed you with respect to the objects of this picketing? A. No.

Q. Can you tell us whether the testimony which you just gave with respect to the foreign flag operation is an expression of your intention or of this committee's intention? A. That is my personal opinion which I an-

Paul Drozak—for Defendants—Redirect

swered is my feeling is one of the problems in this country today, not the committee's feeling. I don't know

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what this committee is going to do. What action they may tell us to do tomorrow may be something different than today. This is my personal opinion.

Mr. Perkel: I have no further questions.

The Court: Mr. Deakins, any further cross examination?

Examination by Mr. Deakins

Q. You are in charge of the picketing here, aren't you, Mr. Drozak? A. No, sir.

Q. Who is? A. The committee is.

Q. Well, you are on the committee? A. That's correct.

Q. Now, you attend meetings of the SIU regularly when they have them in New York and other places, don't you? A. No, sir.

Q. You have been a long-time member of the staff of the SIU, haven't you? A. Twenty-five years.

Q. For how long? A. Twenty-five years.

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Q. During the 25 years that you have been a business agent—is that it? A. Yes.

Q. —you have represented the SIU in the Ports of Houston, Galveston, in the Sabine area, have you not? A. That's correct.

Q. And you disseminate the policies of the SIU, its policies in these areas; isn't that right? A. That's right.

Q. And you direct the picketing and all those things

Paul Drozak—for Defendants—Re-Redirect

that the SIU does in this area? A. That the SIU does itself in this area.

Q. Yes, sir, right. A. We have a committee that functions in this.

Mr. Deakins: Yes, sir. That's all.

The Court: Anything further, Mr. Perkel?

Mr. Perkel: Yes, just one thing.

Examination by Mr. Perkel

Q. In your normal course of duties, Mr. Drozak, with the SIU, you in fact have a great deal of discretion what you can do and what you can't do, isn't that correct?

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A. That's correct.

Q. In this case have you any discretion whatsoever?

A. No.

The Court: I didn't hear you.

A. No, sir.

Q. How do you know that? A. Well, in my own discretion there is a lot personally, myself, I feel that has been done wrong to the American Merchant Marine. That is my personal opinion. What policy that will be laid tomorrow to protect our jobs and to protect the American Merchant Marine is not my authority.

Q. Did you not in fact in this case receive instructions which nobody was allowed to vary except by written instruction? A. That's correct.

Q. With respect to all activities concerning this? A. That's right.

Mr. Perkel: I have no further questions.

The Court: Mr. Deakins?

Charles A. Mills—for Defendants—Direct

Mr. Deakins: Nothing else.

The Court: May he be excused?

Mr. Perkel: Yes, Your Honor.

The Court: Do you want him further?

Mr. Deakins: We might get him later if

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we might need him, but we can get Mr. Drozak if we need him. I know how to catch him.

The Court: You are excused, Mr. Drozak. If Mr. Deakins needs you, he will get in touch with you.

(Witness excused.)

The Court: Call your next witness, Mr. Perkel.

Mr. Perkel: Call Mr. Charles Mills, Your Honor.

The Court: Charles Mills, come around, please.

CHARLES A. MILLS, called as a witness on behalf of the defendants, having been first duly sworn, testified upon his oath as follows:

Examination by Mr. Perkel

Q. Mr. Mills, who are you presently employed by? A. National Maritime Union.

Q. In what capacity? A. Patrolman, assistant to the business agent.

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Q. Mr. Mills, you have heard the testimony of a great many people today and on prior occasions. Are you familiar with the subject matter of this suit? A. Yes, I am.

Charles A. Mills—for Defendants—Direct

Q. Were you the National Maritime representative to the committee functioning in Houston as part of the over-all committee? A. Yes.

Q. Can you tell us what instructions you received from your headquarters; that is, the National Maritime Union headquarters, and what you did pursuant to that and if you did send out pickets what you instructed them, anything you can tell us concerning the matter. A. We received instructions from our national office in New York to meet with other unions here at the MEBA Hall, that the attorneys were coming down to instruct us how to handle the picketing and what purpose we were going to picket for; signs were made up. We were given leaflets, and our pickets, we went back to our union halls and asked for volunteers. We secured these people. We went out to check the waterfront to see what foreign flag ships were here, Panamanian or Liberian. After we found them, then we proceeded to place

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pickets with the instructions not to talk to anyone, any conversations only to be held between them. If they were asked any questions to give them a leaflet or refer them to the sign.

Q. Mr. Mills, may I refer you to the next sheet, it's entitled "Picket sign" and one entitled "leaflet," on Defendants' Exhibit 8 in evidence and ask you to examine them, please. I would also like you to look at D-10 in evidence.

Are those facsimile copies of the picket signs which you sent your men out with and leaflets you sent your men out with? A. Yes, they are.

Q. Would you look at the last two pages in D-8, please.

Charles A. Mills—for Defendants—Direct

Are those copies of the instructions which you received from your headquarters? A. Yes.

Mr. Perkel: At this point, Your Honor, just for the convenience of the Court, and possibly to save time on other witnesses, I would ask that counsel stipulate that the various union representatives who will be called here received the same set of instructions, that they sent out their pickets with the same signs and with the same literature and under the same instructions,

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at least to that limited purpose, so I can obviate a whole series of questions with respect to each witness.

The Court: Is this stipulation agreeable?

Mr. Deakins: We will so stipulate, Your Honor. Of course, we want to reserve the right to ask them questions which may lead into some contradictory answers.

Mr. Perkel: Your Honor, even if I don't call a particular union witness, I will have him available for cross examination on any issue relevant to this stipulation.

Mr. Deakins: We will stipulate to that, yes, sir.

The Court: The stipulation, as the Court understands it, is that each of the defendants named in this suit issued identical instructions with identical leaflets and identical picket signs to its members and committees here in Houston. Is that the stipulation?

Mr. Perkel: And that the pickets which were dispatched in Houston were sent out with those picket signs and with that literature and in accord-

Charles A. Mills—for Defendants—Direct

ance with the instructions contained in the instructions received from the headquarters,

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in that two witnesses have already testified that they sent their people out with instructions not to speak and to hand out literature if somebody asked you a question, and I am just saying that everybody is going to say that.

The Court: The SIU and the NMU have already testified that is a fact, and the stipulation is that all of the others did the same thing, all the other defendants. Is that agreeable?

Mr. Deakins: Yes, Your Honor, that is correct.

The Court: Very well. Let the record so show, and we will not have to ask these witnesses these questions then.

Q. (By Mr. Perkel) Mr. Mills, does the NMU currently have any ships idle and not working in the immediate area here? A. Yes, we do.

Q. Can you tell us what they are? A. The Gulf Merchant, Ashley Lykes, the Ruth Lykes, and that's all at the present time in this area.

Q. In this immediate area? A. Houston area, yes.

Q. Can you tell me how many jobs that involves out of your hall?

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A. About a hundred jobs.

Q. Can you tell me what the number of jobs, or some idea of the number of jobs, posted in your hall presently available for your members are like compared to a comparable period to some year or two ago? A. We can use the figures from last year.

Charles A. Mills—for Defendants—Cross

Q. Would you, please? A. And compare with the same period this year, eleven months, and we found that our shipping has fallen off approximately fifty-seven percent from just one year.

Q. There are fifty-seven percent less jobs? A. Less job.

Mr. Perkel: I have no further questions of this witness, Your Honor.

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The Court: You may cross examine this witness.

Cross examination by Mr. Deakins

Q. I didn't hear the name of the idle ships, Mr. Mills.

A. The Gulf Merchant, Ashley Lykes, and the Ruth Lykes.

Q. Ruth, R-u-t-h? A. Ruth, R-u-t-h.

Q. Gulf Merchant. Who are the owners of that vessel?

A. The Lykes Brothers, all three of them.

Q. The chief competition of the NMU in the United States is the SIU, isn't it? A. No.

Q. Who is? A. We do not compete against one another. We are in the same field.

Q. Oh, you don't? I see. A. We have the same problems.

Mr. Deakins: Oh, I see.

That's all. Thank you very much.

The Court: Is there anything further, Mr. Perkel?

Mr. Perkel: No. I have no further

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questions.

The Court: May he be excused?

Mr. Deakins: Yes, Your Honor.

The Court: Very well. Thank you, Mr. Mills.
You are excused.

Karl Landgrebe—for Defendants—Direct

(Witness excused.)

The Court: Call your next witness, Mr. Perkel.

Mr. Perkel: Mr. Karl Landgrebe, please.

KARL LANDGREBE, called as a witness on behalf of the defendants, having been first duly sworn, testified upon his oath as follows:

The Court: You have been sworn, haven't you, Mr. Landgrebe?

A. Yes, sir.

The Court: Have a seat, please, sir.
Go ahead, Mr. Perkel.

Examination by Mr. Perkel

Q. Mr. Landgrebe, who are you employed by, please?

A. The Marine Engineers Beneficial Association,

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District No. 1.

Q. In what capacity, Mr. Landgrebe? A. I believe they are presently carrying me as branch agent in Tampa, Florida.

Q. And you are presently in Houston? A. I'm presently in Houston.

Q. How long have you been here? A. Since the start of this picketing.

Q. Mr. Landgrebe, could you tell us what the condition of shipping here in the Port of Houston is as opposed to a comparable period some time ago, and tell us how

Karl Landgrebe—for Defendants—Direct

you arrived at that, please? A. I went over our permanent record books. We are required to keep permanent records of all jobs dispatched in each port and the capacity of the job and whether it is permanent or relief, et cetera. These are very complete records.

Q. Mr. Landgrebe, I asked you when this first came up to examine the August, September and October, 1971 records. A. Yes, sir.

Q. And I also asked you to compare it to a year before that. A. Yes, sir.

Q. This is the period which we are in now.

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A. Right.

Q. Could you give me the results of what your shipping records show? A. Yes. A year ago, by month—this is August, September and October. If necessary, I can go into it as ratings, or you just want the total?

Q. Just the total. A. Total for the month of August, 1970, there were 42 licensed marine engineers dispatched from the Houston hall.

September of 1970 there were 33 licensed marine engineers dispatched from the union hall.

October, there were 45 licensed marine engineers dispatched from the Houston union hall.

That's a year ago.

The same period, which is the most recent period, of this year, compared to August of '70 with 42 jobs, in August of '71 there were 28 jobs.

Compared with September of '70, in September of '71—in September, '70 there were 33. In September of '71 there were 16.

In October of '70 there were 45. In October of '71, 15. That is the period that I have with me.

Karl Landgrebe—for Defendants—Cross

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Mr. Perkel: I have no further questions of this witness.

The Court: Mr. Deakins?

Examination by Mr. Deakins

Q. When did the strike commence this year among the longshoremen? A. I'm not sure of the date, sir.

Q. Was it in August? A. I said I am not sure of the date.

Q. You don't know at all? A. Not really.

Q. Haven't any of your vessels— A. There has been so many between the West Coast and the East Coast that I am not sure.

Q. So that had some effect on the total number of engineers that shipped out during these periods? A. No, sir, not in the Port of Houston.

Mr. Perkel: Objection, Your Honor. The question has no foundation. It presupposes there was a strike here. I can tell Counsel now there wasn't. The Gulf was not down in the longshore strike.

The Court: I believe the witness was

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about to say that, and he is under oath.

Go ahead, sir. You may go ahead and answer the question.

A. Yes, sir, that's what I was about to say. It did not affect the Port of Houston.

Q. (By Mr. Deakins) This only relates to the Port of Houston? A. That only relates to the Port of Houston.

Q. Why did you pick those three months? A. They are the most available period, for one thing. For another thing, it is the most recent period in our record books

Gerald Goudreau—for Defendants—Direct

that is complete. As you see, it comes from the end of October. This is barely the end of November.

Mr. Deakins: All right. That's all.

The Court: Is there anything further, Mr. Perkel?

Mr. Perkel: Nothing, Your Honor.

The Court: May he be excused, gentlemen?

Mr. Perkel: He may be excused.

Mr. Deakins: Yes, sir, Your Honor.

The Court: You are excused.

(Witness excused.)

The Court: Call your next witness, please.

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Mr. Perkel: I call Mr. Gerald Goudreau.

GERALD GOUDREAU, called as a witness on behalf of the defendants, having been first duly sworn, testified upon his oath as follows:

Examination by Mr. Perkel

Q. Mr. Goudreau, are you a member of one of the defendant unions? A. I am a member of the MEBA, sir.

Q. Mr. Goudreau, were you in fact a picket? A. Yes, I was.

Q. Could you tell us when? A. October the 28th.

Q. And could you tell us where? A. At Cargill Docks.

Q. How did you come to be a picket, Mr. Goudreau?
A. I went down to the union hall to see about some work, and they were asking for volunteers; said we were going to picket the foreign flag ships, and I agreed; said, "Let's go."

Q. Did you receive any instructions? A. Yes, sir. They give us some leaflets to hand out

Gerald Goudreau—for Defendants—Direct

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and signs to carry; told us not to discuss it with anyone; just hand them the leaflets as a reply to any questions.

Q. Did you in fact go down and picket? A. Yes, sir.

Q. I'm sorry. I don't recall.

Did you tell us the name of the vessel you were picketing? A. The Theomana.

Q. Mr. Goudreau, have you been shipping this year?

A. I had a relief trip earlier in the year.

Q. About how many days have you shipped this year?

A. I have about 170 days; 175 maybe.

Q. Is that days worked? A. That's complete. That's days sailing, night relief and vacation time all together.

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Q. How many times did you actually get off the board shipping? A. You mean a sailing job?

Q. Yes. A. I sailed about two months.

Q. Two months? A. About two months.

Q. About sixty days? A. Right.

Q. And do you recall what it was like the year before? A. Pardon me?

Q. How many days you sailed the year before. A. Not too many. I was doing a lot of night work.

Q. How many days was that? A. About 129, I believe it was.

Q. And how many days did you sail the year before that, to the best of your recollection? A. 150 something. About 155 perhaps.

Q. Have you been registered regularly in the hall? A. Yes, sir.

Q. What kind of a ticket do you have, Mr. Goudreau? A. Third assistant.

Gerald Goudreau—for Defendants—Direct

Q. Mr. Goudreau, on the picket line did you have occasion to speak with anybody at any time? A. No, sir, not other than the other pickets.

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Q. Pardon me? A. Just the other pickets that were there with me.

Q. Did anybody in fact approach your line? A. Yes, sir, there was some traffic passing.

Q. Did you hand out any literature? A. Yes, sir.

Q. Mr. Goudreau, I call your attention to Defendants Exhibit 8, a sheet marked "leaflet," and Defendants' Exhibit 10, and ask you whether you handed out both or either of them on the picket line. A. Yes, sir. I handed out these—what is it?

Q. That one which is contained in Defendants' Exhibit 8. A. Right.

Q. You did not hand out this (indicating)? A. No. I didn't have that one there at the time.

Mr. Perkel: I have no further questions of this witness.

The Court: Mr. Deakins?

Mr. Deakins: No cross examination.

The Court: May he be excused?

Mr. Deakins: Yes, sir.

The Court: Thank you very much, Mr. Goudreau. You are excused.

(Witness excused.)

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The Court: Call your next witness, Mr. Perkel.

Mr. Perkel: Mr. Briscoe.

Jocko D. Briscoe—for Defendants—Direct

JOCKO D. BRISCOE, was called as a witness by the defendants and, having been first duly sworn, testified upon his oath as follows:

Examination by Mr. Perkel

Q. Mr. Briscoe, are you a member of any of the defendant unions here? A. Yes. I am a member of the National Maritime Union.

Q. Do you presently sail? A. Yes.

Q. Were you a picket, Mr. Briscoe, in this proceeding? A. I furnished transportation for the pickets.

Q. Did you in fact go to a picket line? A. Yes, I did.

Q. How did it come that you were asked to assist in this? A. I was in the hall when the news come down from

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New York about the picketing, and they asked for volunteers to carry the signs and to pass the leaflets, and so I volunteered.

Q. Mr. Briscoe, you have shipped quite a bit, haven't you? A. Yes, I have.

Q. Will you tell us how many days you shipped this year? A. I have approximately 153 days.

Q. This year? A. This year.

Q. Could you tell me how many days you shipped last year? A. Last year I had about 180.

Q. And the year before? A. I had 365.

Q. Now, Mr. Briscoe, what is your rating? A. I sail chief steward, chief cook, second cook and baker, but lately I have been taking lower jobs because there is no more jobs.

Jocko D. Briscoe—for Defendants—Direct

Q. What jobs did you have three years ago when you sailed 365 days, Mr. Briscoe? A. Chief steward.

Q. And last year what jobs did you have? A. I had galleyman, third cook, chief cook.

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Q. Have you any idea of the proportions, how much time on each? A. Let's see. The galleyman was four months—no. The galleyman was two months. Third cook was three months. Chief cook was two months.

Q. Is there a difference in pay between those three jobs? A. Very much so.

Q. What does a chief cook get? A. Chief cook makes five hundred eighty something. I don't recall.

Q. How about a galleyman? A. Galleyman makes three something.

Q. This year what have you shipped as? A. Second cook and baker.

Q. What's the difference in pay between second cook and baker and your rate of chief cook? A. My rate is chief steward.

Q. Chief steward. A. It's about \$250 difference. This is the base.

Q. What is the rate for chief steward? A. Chief steward is six hundred seventy-one.

Q. And baker? A. Baker is four hundred fifty-one.

Q. Galleyman?

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A. Galleyman is three hundred forty-eight.

Q. I believe you said you also sailed as a chief cook? A. Right.

Q. What is the pay for that? A. Five hundred seventy-six, I think.

Jocko D. Briscoe—for Defendants—Direct

Q. Mr. Briscoe, you hold a chief steward's rate, is that correct? A. Yes, sir.

Q. Can you tell us why you took jobs as galleyman and— A. There is no other jobs in the hall. If you want to live, you have to take what come in.

Mr. Perkel: I have no further questions of this witness.

Mr. Deakins: No questions, Your Honor.

The Court: All right. May he be excused, then?

Mr. Deakins: Yes, sir.

The Court: You may be excused, Mr. Briscoe. Thank you for coming.

(Witness excused.)

Mr. Perkel: Your Honor, if we could have a brief recess, possibly I could speak with counsel as to the rest of my witnesses and we may be

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able to stipulate to them.

The Court: Very well. Let's take ten minutes, and if you are not finished by that time, advise me in Chambers about how much more time you need.

(A recess was taken.)

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The Court: Are you prepared to go forward now?

Mr. Perkel: Your Honor, we have discussed the matter in the recess, and we have agreed to stipulate, to convenience the Court and all counsel, that any witnesses who are called, pickets, picket witnesses who were called, would testify in the same manner, to the same effect as the witnesses who were called.

With that stipulation, Your Honor, I would ask

Jocko D. Briscoe—for Defendants—Direct

that this Court recess the matter until tomorrow morning, as I intend to have one more witness who may testify with respect to the materials which were delivered to us today concerning the seamen's wage vouchers for various of the vessels which were promised to be delivered to us.

It may very well be that this witness will not be necessary after examining them, but I do not envision more than one or two witnesses tomorrow morning at the most.

The Court: We have had one picket witness testify, and that's Gerald Goudreau, I believe.

Mr. Perkel: Jocko Briscoe. Jocko

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Briscoe testified he wasn't a picket.

The Court: Briscoe said he supplied transportation to pickets.

Mr. Perkel: Let me modify that. I will call one more picket witness, and it will round it out. I thought I had two, but Your Honor's recollection is correct. Mr. Briscoe just testified that he transported pickets. So after the calling of one more witness today, the stipulation would be as we stated it, and we would ask the matter be adjourned until tomorrow morning.

The Court: Let's call the picket then and get him off so he can get back to work.

Mr. Deakins: Your Honor, we will stipulate as to this other additional picket.

The Court: The points of the testimony seem to me to be that the pickets did not converse with anybody. There is no evidence of violence.

Mr. Deakins: Handed out leaflets.

Eugene P. Spector—for Defendants—Direct

The Court: They handed out leaflets and carried a sign, and we have pictures of the sign in evidence as well as the leaflets. Is that correct?

Mr. Perkel: Correct, Your Honor. And with that stipulation, then, I have no problem.

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The Court: Very well. No violence, no conversation, and he further testified that there were only two pickets at each ship.

Mr. Perkel: Two picketing, four pickets. There were two up and two on relief.

The Court: Well, two pickets on duty at any one time.

Mr. Perkel: Yes, Your Honor.

Mr. Deakins: Yes, sir.

The Court: And two pickets on duty at any one time. Very well, the stipulation is agreeable to the Court, and it will be made of record.

* * *

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EUGENE P. SPECTOR, a witness called on behalf of the defendants, having been first duly sworn, testified upon his oath as follows:

Examination by Mr. Perkel

Q. Mr. Spector, can you tell us who you are employed by? A. I am employed by the National Maritime Union.

Q. In what capacity? A. Research director.

Q. Mr. Spector, can you give the Court a brief resume of your prior work history and your qualifications? A. Yes, sir. I have a Bachelor of Science from George Wash-

Eugene P. Spector—for Defendants—Direct

ington University in business administration, '47; '50, law degree from the same university.

I was employed for three years in the industrial relations department of the American Trucking Association, three years with the Department

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of Labor as a labor economist, a year with the Department of Commerce as transportation attorney.

I spent five years as labor and cost analyst in maritime problems with the National Academy of Sciences, and then eight years with the American Merchant Marine Institute, which is a trade association of American flag steamship companies, and the last five years as research director for the National Maritime Union.

Q. Mr. Spector, can you tell us whether you have been involved in any of the contract negotiations for the National Maritime Union with its contract employers? A. I was involved in the 1969 negotiations, which was the last contract, and also involved with reopeners in 1967 and '68. On the other side of the bargaining table with the employers, the bargaining group, which was the American Merchant Marine Institute, I was involved in the collective bargaining in the wage reopener in 1955, and in 1961 contract renewal and in the contract extension in 1963, which brought the contract through to '69.

Q. Mr. Spector, can you tell us from your knowledge whether the National Maritime Union in their

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collective negotiations have attempted to meet the problem posed by the foreign competition?

Mr. Deakins: I object. This is immaterial. It is based on hearsay testimony; no showing that any

Eugene P. Spector—for Defendants—Direct

of these plaintiffs were parties to that or had knowledge of it at the time or any statements made in their presence.

The Court: The objection is sustained.

Q. Mr. Spector, has the National Maritime Union reduced its manning scales? A. Yes, sir.

Q. Can you tell us what has been done in that connection? A. Most recently we had two ships with Moore McCormack Lines that they had no commercial use for. They attempted to charter the vessels to the Military Sea Lift Command, and in order to meet the charter rates the government was prepared to pay, they requested the union to reduce manning. At that time we had 30 unlicensed seamen on the vessel. We reduced the manning to 28.

When that vessel was in commercial service in subsidized operations, it had 34 men so that it now had a crew reduction of six men on two ships. But we have worked out arrangements

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on tanker and dry cargo vessels for manning reductions for most of our contract companies in order to keep some degree of stability in labor costs.

Mr. Deakins: I object to any further question on this line. It has no bearing on these proceedings, Your Honor. I couldn't tell where this was going or I would have objected to the question.

Mr. Perkel: This objection comes about a day too late, because yesterday we had testimony from witnesses, two witnesses, with respect to reduction of manning scales on their vessels in an attempt to meet foreign competition.

The Court: This objection is overruled to the last question.

Eugene P. Spector—for Defendants—Direct

Q. Mr. Spector, the reduction of manning scales resulted in approximately how many jobs lost to the National Maritime Union? A. When I first came with the National Maritime Union, which was the end of 1966, at our convention we announced that we had around 22,500 jobs. In 1968 I put in an IBM system of keeping track of all of our vessels, and in September of '68 we had 19,596 berths. In July of '69 it was 17,314. In June of

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'71 it was down to 9,649, and currently we are running around 9300 jobs. So we have had an enormous loss of berths.

Q. Mr. Spector, in the course of your employment, have you had occasion to examine into and study general wage levels paid to maritime, unlicensed maritime employees and compare these levels to the general industrial level in the United States? A. Yes, sir.

Mr. Deakins: I object to this as immaterial, Your Honor; no relation to the issues in these proceedings.

The Court: The objection is sustained.

Mr. Perkel: Your Honor, one of the items in this proceeding is the fact that we are claiming that they are depressing our standards. One of the issues I would hope to show through this witness along with this line of questioning was the maritime worker earns no more than the average industrial worker in the United States and that his standard is in fact slightly lower, and that the threat to his standards is significant. I ask Your Honor, in light of that, in that direction which I wish to move, that you reconsider your ruling.

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The Court: In the opinion of the Court, the comparison between seamen's wages and other industrial wages would open this hearing to a Pandora's box of unlimited examination by both sides concerning various trades, crafts and comparison of the hours of work, et cetera, which I don't think would be proper in this proceeding. For that reason I am going to sustain the objection and will hear no evidence concerning comparison of seamen's jobs with other jobs other than foreign seamen.

Mr. Wright: Your Honor, would the Court hear an offer of proof?

The Court: You may make such offer of proof as you want to, gentlemen.

Mr. Wright: Your Honor, we would like for the record to show that if the witness were permitted to testify—

The Court: Let him testify. I am going to disregard what he says.

You may answer that question on this Bill of Exception, Mr. Spector.

Restate the question, please, Mr. Perkel.

Q. Mr. Spector, could you compare for us the general
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level of maritime unlicensed wages with the general industrial level of wages in the United States? A. Yes, sir. Very simply stated, I think the all-manufacturing average in comparison in an hourly rate basis in relation to the average hourly earnings, straight time, of a maritime worker would be roughly equivalent in the neighborhood of \$3 an hour.

Eugene P. Spector—for Defendants—Direct

Q. Is there any distinguishing feature with respect to modification of a yearly rate if you apply that \$3 an hour figure to the maritime industry? A. By reason of the nature of the type of employment in the maritime industry and the difficulty of staying with the job for a full year at best, a full-time seaman might work eight to nine months a year, and therefore his earnings would be somewhere in the neighborhood, in terms of take-home pay before taxes, of course, around \$8,000 a year. This is considered to be below that standard of the Bureau of Labor Statistics necessary for a family of four to live at a level—they put out three budgets. One is a subsistence level budget for welfare purposes, one is a median budget, and one is a more comfortable budget, which allows for

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savings and additional expenditures.

The 8,000 a year would fall below the middle budget. So that I cannot consider a seaman in the American industry as being a highly paid individual on an annual basis, and with our work declining the ability of a seaman to earn money is declining.

* * *

**Judgment of the District Court of Harris County, 164th
Judicial District of Texas, December 10, 1971**

Printed in the Appendix to Petition for Certiorari at
Pages A1-A3.

**Opinion and Judgment of Court of Civil Appeals of
Texas, Filed May 17, 1972**

COURT OF CIVIL APPEALS

FOURTEENTH SUPREME JUDICIAL DISTRICT OF TEXAS

AFFIRMED, and Opinion filed May 17, 1972.

No. 635

WINDWARD SHIPPING (LONDON) LIMITED, et al,

Appellants

VS.

AMERICAN RADIO ASSOCIATION AFL-CIO, et al,

Appellees

Appeal from 164th District Court of Harris County

In October of 1971 the cargo vessels Northwind and Theomana, both of Liberian registry, were docked at the Port of Houston for the purpose of loading and unloading cargo. American Radio Association, AFL-CIO and five other deep sea maritime unions, acting in concert, established picket lines which longshoremen and other workmen would not cross to service such vessels. The

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owners of the vessels filed suit in the district court in Harris County to enjoin permanently such picketing. The district court, after hearing evidence, dismissed the owners' suit, concluding that the court was without jurisdiction because of pre-emption by the National Labor Relations Board. The owners have appealed. We affirm the trial court's judgment of dismissal.

The basic facts of the case were established by stipulation or uncontroverted evidence. The vessels in question carry cargo between United States ports and foreign ports. They do not carry cargo from one port in the United States to another port in the United States. The crews and officers of the vessels are foreign nationals. There is no labor dispute between the owners of the vessels and their crews or the foreign unions who represent them or on the foreign contracts under which they work. The picketing unions neither have nor claim the right to represent the crews, nor do they seek to obtain such right. None of the crew members are members of the picketing unions. The picketing has been peaceful and without violence or threat of violence.

Four pickets commenced picketing the *Theomana* at the Port of Houston on October 28, 1971, and four began picketing the *Northwind* the following day. Signs carried by the pickets bore the following message:

"ATTENTION TO THE PUBLIC

The wages and benefits paid seamen aboard the vessel *THEOMANA* (*NORTHWIND*) are substandard to those of American seamen. This results in extreme damage to our wage standards and loss of our jobs. Please do not patronize this vessel. Help the American seamen. We have no dispute with any other vessel on this site." (Parenthesis added)

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The signs bore the names of the picketing unions.

The pickets did not speak to anyone. When inquiry was made of them they handed out literature in the following language:

“TO THE PUBLIC

American Seamen have lost approximately 50% of their jobs in the past few years to foreign flag ships employing seamen at a fraction of the wages of American Seamen.

American dollars flowing to these foreign ship owners operating ships at wages and benefits substandard to American Seamen, are hurting our balance of payments in addition to hurting our economy by the loss of jobs.

A strong American Merchant Marine is essential to our national defense. The fewer American flag ships there are, the weaker our position will be in a period of national emergency.

PLEASE PATRONIZE AMERICAN FLAG VESSELS, SAVE OUR JOBS, HELP OUR ECONOMY AND SUPPORT OUR NATIONAL DEFENSE BY HELPING TO CREATE A STRONG AMERICAN MERCHANT MARINE.

Our dispute here is limited to the vessel picketed at this site, the SS ”.

This literature, too, had on it the names of the picketing unions.

The refusal of longshoremen and others to cross the picket lines resulted in damage to the vessels' owners which the unions agree is incalculable.

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The first step taken to stop the picketing was the filing, in behalf of the owner of the *Theomana*, of a complaint with the NLRB charging the unions with secondary picketing. The next day suit was filed in behalf of such owner in the district court of Harris County seeking temporary and permanent injunction. The petition in that suit also alleged that the unions were guilty of secondary picketing. The complaint with the NLRB was voluntarily withdrawn by the complainant. The pleadings in the district court of Harris County were amended. Those pleadings as amended alleged, in behalf of the owners of both vessels, that the picketing by the defendant unions was for the purpose of inducing the owners to breach their contracts with their crews and the foreign union representing those crews. It was alleged that such activity was in violation of Tex. Rev. Civ. Stat. Ann. art. 5154d, sec. 4 (1947) and was a tort under Texas law.

The unions answered to the suit filed by the owners, asserting the defenses that: (1) The jurisdiction over the subject matter of the dispute was pre-empted to the NLRB by the Labor Management Relations Act, 29 U. S. C. sec. 151, et seq. (1947). (2) The Norris-La Guardia Act, 29 U. S. C. sec. 101, et seq. (1932), prohibited the granting of the injunction sought. (3) The activities sought to be enjoined were protected by constitutional guaranties of free speech. (4) Tex. Rev. Civ. Stat. Ann. art. 5154d, sec. 4 (1947), if applicable to their activities, would be unconstitutional. (5) The owners were without clean hands in that their conduct was contrary to the public policy of the United States to promote the merchant marine, as pronounced in 46 U. S. C. sec. 1101 and sec. 1241 (1970). The trial court sustained the first of those asserted defenses and did not make findings of fact

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or conclusions of law relating to the others. We shall likewise confine our discussions to the jurisdictional pre-emption question.

Since *San Diego Building Trades Council v. Garmon*, 359 U. S. 236 (1959), state jurisdiction in cases of labor disputes has been compelled to yield to the jurisdiction of the NLRB if the activities complained of are arguably either protected by section 7 or prohibited by section 8 of the NLRA as amended by the LMRA. The determination of whether activity in fact is or is not protected or proscribed by the statute is initially for the NLRB. Failure of the Board to determine the status of the activity does not pass jurisdiction to the state courts. After the *Garmon* case state jurisdiction notwithstanding federal pre-emption rules is confined to (1) those cases involving libel, *Linn v. United Plant Guard Workers Local 114*, 383 U. S. 53 (1966), and other matters "deeply rooted in local feeling or responsibility", *Garmon*, *supra*; (2) cases in which jurisdiction has been ceded to the state by the NLRB by virtue of 29 U. S. C. sec. 160(a) (1959); (3) cases in which the disputed activity is a "merely peripheral concern" of the LMRA, *Garmon*, *supra*, (e.g., breach of contract, damages for wrongful expulsion from a union); (4) cases in which the NLRB refuses jurisdiction; and (5) those cases involving violence, e.g., *International Union, Etc. v. Russell*, 356 U. S. 634 (1958); *International Assn'n of Machinists v. Gonzales*, 356 U. S. 617 (1958); *United Const. Workers, Etc. v. Laburnum Const. Corp.*, 347 U. S. 656 (1953); *Youngdahl v. Rainfair, Inc.*, 355 U. S. 131 (1957); *United Auto., A. & A. I. W. v. Wisconsin Emp. Rel. Bd.*, 351 U. S. 266 (1955). The courts of Texas have adhered to these principles. *Ex Parte Dilley*, 160 Tex. 522, 334 S. W. 2d 425 (1960);

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Carpenters & Joiners Local Union No. 1097 v. Hampton, 457 S. W. 2d 299 (Tex. Civ. App.—Tyler 1970, no writ).

This Court's primary inquiry, then, is whether the appellees' picketing here in question was arguably prohibited or protected under the LMRA (29 U. S. C. sec. 157 and sec. 158). As appellants point out, appellees' picketing carefully remained within the guidelines for permissible picketing on the premises of a secondary employer promulgated in *Sailor's Union of the Pacific*, 92 N. L. R. B. 547 and adopted in *Local 761, Inter. U. of E., R. and M. Wkrs. v. NLRB*, 366 U. S. 667 (1961). These principles, commonly referred to as the "Moore Dry Dock Rules", consider picketing of a secondary employer's premises lawful primary activity when it meets these conditions:

- (1) The picketing is strictly limited to times when primary employees are present at the premises of the secondary employer or at the common premises.
- (2) The primary employer is engaged in his normal business at the picketed premises at the time of the picketing.
- (3) The picketing is limited to places reasonably close to the locations on the premises where the employees of the primary employer are at work.
- (4) The picketing clearly discloses that the dispute is with the primary employer alone.
- (5) The primary employer has no separate place of business at which a reasonable opportunity is afforded to reach his employees by picketing.

In the instant case the evidence reveals that appellees picketed only when the vessels of the appellants, primary

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employers, were dockside. Secondly, when picketed the ships were being loaded and unloaded, part of the usual operation of cargo ships and the normal business of the primary employers. Moreover, the picketing was limited to the dock at which the vessels were berthed. Further, the signs carried by the picketers clearly restricted the picketing to the primary employer. And, the two ships were the only reasonably accessible places of business to which the unions could direct their attention and efforts. Accordingly, appellees were not engaged in a secondary boycott. No other violation of section 8 is intimated by the parties and none other appears from the record.

We must, then, consider whether appellees' conduct was arguably protected under section 7 of the LMRA.

Section 7 is in the following language:

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a) (3) of this title."

Peaceful picketing has repeatedly been held protected by this section of the NLRA (amended by LMRA, 29 U. S. C. sec. 157). *Garner v. Teamsters, Chauffeurs and Helpers, Etc.*, 346 U. S. 485 (1953); *Carter Carburetor Corp. v. National Labor R. Board*, 140 F. 2d 714 (8th Cir.

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1944); *National Labor Relations Board v. Thayer Co.*, 213 F. 2d 748 (1st Cir. 1954); *Edir, Inc. d/b/a Wolfie's v. Club & Restaurant Employees and Bartenders' Union Local No. 133, AFL-CIO, et al*, 159 N. L. R. B. 72 (1966); *Sears-Roebuck & Company v. Retail Store Employees' Union, Local 345, AFL-CIO*, 168 N. L. R. B. 126 (1967). And see *Cox, The Right to Engage in Concerted Activities*, 26 IND. L. J. 319 (1951). The Supreme Court has expressly recognized that a union's peaceful picketing to protest wage rates below established area standards arguably constitutes protected activity under section 7. *International Longshore. Local 1416 v. Ariadne Shipping Co.*, 397 U. S. 195 (1970), and cases cited therein. This is the now well-recognized "area standards" picketing.

One case is persuasive authority in support of the trial court's order of dismissal. In *South Georgia Co., Ltd. v. Marine Engineers Beneficial Ass'n.*, 44 CCH Lab. Cas. 26,269 (La. Dist. Ct. 1961) picketing of a foreign ship with a foreign crew by an American union to protest loss of jobs by U. S. seamen from use of that ship to transport cargo purchased by Indonesia under the Agricultural Trade Development and Assistance Act was held to be arguably protected by section 7 of the L. M. R. A.

In *Ex Parte George*, 163 Tex. 103, 358 S. W. 2d 590 (1962), vacated 371 U. S. 72 (1963), on remand 364 S. W. 2d 189 (Tex. Sup. 1963), an American maritime union which represented unlicensed crew members on American Oil Company vessels was involved in a labor dispute with that company. The union picketed the main gate and parking lot gate at a coastal refinery operated by a wholly-owned subsidiary of American Oil. Workers at the refinery were represented by a separate union. Despite a finding, supported by the record, that the union's purpose

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was to induce the violation of American Oil's existing contract with the refinery worker's union (a violation of Art. 5154d here in question), the U. S. Supreme Court held that the maritime union's picketing was arguably protected by section 7.

In this case with facts not so gross as those in *Ex Parte George*, there appears no persuasive reason to hold contrary to the Supreme Court's holding in *George*. In fact, appellants do not argue that the appellees' picketing is not of a character sufficient to fall within section 7's protection. Rather, they contend that the LMRA "does not extend to the maritime operations of foreign-flag ships employing foreign aliens, and that American union activity which affects the internal affairs of the ship and its foreign crew is not protected by the Act." Appellants base their contention on three cases: *Benz v. Compania Naviera Hidalgo, S.A.* 353 U. S. 138 (1957); *McCulloch v. Sociedad Nacional, Etc.*, 372 U. S. 10 (1963); and *Ingres Steamship Co. v. International Maritime W. U.*, 372 U. S. 24 (1963). All three of those cases involved foreign-owned and registered ships with alien crews under foreign articles. In *Benz* the crew members went on strike and their cause was taken up successively by three different American unions. In *McCulloch* an American union petitioned for certification as the representative of foreign crewmen and the NLRB ordered an election. In *Ingres* an American union picketed as part of its campaign to organize foreign crewmen. In each case the Supreme Court held that the NLRA, as amended, does not apply to foreign-registered ships employing alien seamen. This is so because the NLRB's jurisdiction is based upon circumstances "affecting commerce" and the Court concluded that maritime operations of foreign-flag ships employing

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alien crewmen are not "in commerce" as that term is contemplated by section 2(6) (29 U. S. C. sec. 152(b) (1947)).

McCulloch and Ingres were decided on the basis of Benz. In *Marine Cooks and Stewards*, supra, the Supreme Court, while involved in a construction of the Norris-LaGuardia Act, drew an important distinction between the facts in Benz and those in *Marine Cooks*. The Court noted that in Benz an American union, to which none of the alien crew members belonged, had a substantial, immediate interest in the "internal economy" of the ship. The *Marine Cooks* case involved facts essentially the same as now before us (except that picketing was by boat and not at the dock of consignee, although that was expressly threatened). Justice Black, speaking for eight justices (Justice Whittaker dissented on a separate issue), viewed the union members' interest there as being "in preserving job opportunities for themselves in this country," not in the "internal economy" of the foreign vessel. They were picketing on their own behalf and not for the benefit of foreign employees. The opinion labeled the dispute as domestic even though the employer was foreign.

The Benz case was distinguished from a case factually identical to the present case on the basis of the distinction noted by Justice Black in *Marine Cooks*. *South Georgia Co., Ltd., v. Marine Engineers Beneficial Assn'n*, supra. The Court in *South Georgia* characterized Benz as involving only "an internal dispute on a foreign ship." In *Madden v. Grain Elevator, Flour & Feed Mill Wkrs., Etc.*, 334 F. 2d 1014 (7th Cir. (1964) the Seventh Circuit rejected a union's contention that, based upon Ingres, the NLRB lacked jurisdiction of a dispute involving union members' refusal to unload ships so as to compel their

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employer to cease doing business with a Canadian shipping company. In passing on a contempt order arising from a secondary boycott complaint, the Court found that no attempt was being made to apply the NLRA to "the internal management or affairs" of the vessels involved. In a subsequent chapter of the same dispute the D. C. Circuit sustained the finding of the Seventh Circuit that *Ingres* was inapplicable. *Grain Elevator, Flour and Feed Mill W., I. L. A., Loc. 418 v. NLRB*, 376 F. 2d 774 (D. C. Cir. 1967). These cases construe the *Ingres* case to hold not that the NLRB lack jurisdiction of *any* "maritime operations" of a foreign ship and crew, but that the Board lacks jurisdiction over the "internal affairs" of a foreign ship and crew. This is a more narrow and precise area of activity and one which hints of exclusion of the usual elements of a cargo-carrying operation and focuses only upon crew-owner relations.

In 1970 the Supreme Court was presented with a case of union picketing to protest the substandard wages paid by foreign-flag vessels to American longshoremen in American ports. *International Longshore. Local 1416 v. Ariadne Shipping Co., supra*. The question of pre-emption was squarely at issue. Lower courts had held no pre-emption because the NLRB lacked jurisdiction. *McCulloch* and *Ingres* were the authority for that holding. The Supreme Court reversed and held that the longshore activities of American longshoremen were not within the maritime operations of foreign-flag vessels. The Court carefully pointed out that the construction of the federal statute in *Benz*, *McCulloch* and *Ingres*,

"... was addressed to situations in which Board regulation of the labor relations in question would necessitate inquiry into the 'internal discipline and order' of a foreign vessel . . .".

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The Court concluded that the functions of the American longshoremen did not constitute involvement with the ships' "internal discipline and order". Application of American labor statutes to resolve a conflict over wages paid to American longshoremen thus would not interfere with the foreign ships' internal affairs. Consequently the longshoremen's operations were "in commerce" and could be subject to the board's jurisdiction.

There is still no clear statement of the Supreme Court's position as to whether the NLRB has jurisdiction of, as here, picketing by American *seamen* to protest substandard wages and conditions on foreign vessels. The picketing in the *Ariadne* case could not have been any less destructive to the cargo-carrying business of the ships than the protracted picketing and conflict in *Benz*. So, it seems that the terms "internal affairs" and "internal order and discipline" must refer to the relationship between crew and employer and not to the carrying-on of the business for which the vessel is employed (a matter between shipowner and shipper). This construction has support in the language employed by the Court in the *Ariadne* case where the Court refers to the crucial term "internal affairs" of the foreign ship as affairs "which would be governed by foreign law," i.e., (see footnote 4) the foreign ships' articles. Ships' articles concern such matters as seamen's conduct and obedience, wages, seamen's liability for cargo damaged or embezzled, competency in performance of seamen's duties and airing of seamen's grievances. See, e.g., 46 U. S. C. sec. 713 (1946). The issue in *McCulloch* and *Ineres* was representation of foreign seamen. In *Benz* it was picketing to support a strike by the foreign crewmembers. To allow American unions to intercede in those instances would clearly be to

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allow interference with the internal order, discipline and affairs of a foreign ship. In *Ariadne* the Court confronted a situation involving American workers hired by foreign ships to serve, not as seamen, but as longshoremen. As noted before, the Court held that the longshoremen's activities performed by Americans were not an element of the "foreign ships' " internal affairs.

Ariadne differs from the instant case in at least two respects. First, it dealt with longshoremen rather than seamen. Further, it concerned picketing in regard to wages to be paid to American workers who were employed by foreign employers. The casual connection between American longshoremen's duties and the foreign vessels is what excluded those functions from the reach of the term "internal discipline and order." The Court expressly reserved the question of longshore work performed by foreign crewmen. But in this case there are no American residents employed by foreign ship owners. The protest is not directed to allegedly substandard wages paid by foreign shipowners to then-employed American seamen, but to allegedly substandard wages paid to foreign seamen, with a concurrent request to the public not to patronize the foreign ships. There is no direct interference with the relationship between employer and crewmen. Any direct interference is between the consignee and the shipowner, or the shipowner and the stevedore company. The fact that appellees are seamen and not merely longshoremen cannot indicate greater involvement in the internal affairs of the ships because none are employed on those ships.

It is important also to note that the Court in *Ariadne* focused upon the effect of longshore work upon the ships'

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internal affairs and not upon the purpose and intent of the picketers. The purpose of the activity in question is not of controlling significance in deciding the question of jurisdiction of the activity. (See, e.g., Chief Justice Calvert's dissenting opinion in *Ex Parte George*, 358 S. W. 2d 590, 607). If the picketing intervenes in an alien crewmen's strike or strives to organize those crewmen it constitutes involvement with matters not "in commerce". If it but voices a complaint as to foreign wages and urges the public not to patronize foreign vessels it does not engage in matters outside of commerce. It is peaceful picketing, publicizing a labor dispute, of such a character that its validity is suggested by the Court's holding in the *Marine Cooks* case, *supra*. It is, at least arguably, a protected activity under section 7 of the LMRA. As such, it is an activity as to which the exclusive jurisdiction to determine its propriety has been preempted to the NLRB. Upon that basis the trial court properly dismissed the plaintiffs' suit for want of jurisdiction.

Affirmed.

/s/ BERT H. TUNKS
Chief Justice

Judgment rendered, and Opinion filed May 17, 1972.

**Order of the Court of Civil Appeals, Fourteenth
Supreme Judicial District of Texas, June 14, 1972**

Printed in the Appendix to Petition for Certiorari at
Pages C1-C2.

**Excerpt From Application for Writ of Error to
Supreme Court of Texas**

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**POINTS OF ERROR
POINT OF ERROR NO. 1**

The Court of Appeals erred in holding that the Trial Court lacked jurisdiction, under the preemption doctrine of the Labor-Management Relations Act, to determine the issues in this case.

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**Order of the Supreme Court of Texas, Refusing
Application for a Writ of Error, October 4, 1972**

Printed in the Appendix to Petition for Certiorari at
Pages D1-D2.